

# Acquisition Strategy for Defense Base Act Insurance

Report to Congress  
in Response to Section 843 of the National Defense Authorization  
Act for Fiscal Year 2009

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Department of Defense  
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Acquisition and Technology

## Executive Summary

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The Defense Base Act (DBA) (42 U.S.C. 1651 et seq.) provides workers compensation type insurance coverage for contractor employees performing under government contracts outside the United States. It is intended to be a counterpart to domestic workers compensation coverage and, as such, is the sole recourse for workers who suffer on-the-job injuries or death while engaged in work in foreign locations under government prime contracts and subcontracts. Under a companion law, the War Hazard Compensation Act (WHCA) (42 U.S.C. 1701 et seq.), the government essentially self-insures for those instances in which an injury to or death of a DBA-covered worker arises from a war risk hazard. Both the DBA and WHCA programs are overseen and administered by the Department of Labor (DOL).

With the significant and unprecedented buildup of contractors providing support to deployed military forces involved in both Operation Enduring Freedom and Operation Iraqi Freedom, the market for DBA insurance grew significantly. From a somewhat small and insignificant part of the casualty insurance business line—government-wide DBA premiums paid to the top four DBA insurance carriers totaled \$18 million in 2002—it grew over twentyfold to a major market segment covering almost 200,000 prime and subcontractor employees and generating annual government-wide premiums of more than \$400 million. Although DOL approved a significant number of insurers to offer DBA coverage, the current market is dominated by three major carriers, with one of them having about three-quarters of the total market.

The cost for DBA insurance—if allocable and reasonable—is a reimbursable cost under government contracts. Concerns have been expressed about the premium rates being charged for DBA coverage, the level of minimum premiums being quoted, and the availability of DBA coverage for new or small businesses. Consequently, to explore a possible alternative means of acquiring DBA insurance, the Department established a pilot program under the U.S. Army Corps of Engineers (USACE). The Department modeled the pilot program largely on a program used for several years by the Department of State (DOS), under which a single insurance provider was competitively selected and a set of predetermined premium rates was agreed to with no minimum premiums charged. The pilot program was originally intended to cover only USACE-awarded contracts, but in October 2008, contracts awarded by the Joint Contracting Command–Iraq/Afghanistan (JCC-IA) were folded into the USACE single-provider program due to difficulties experienced by the JCC-IA contractors with obtaining DBA coverage and due to the high minimum premiums for some contractors.

In May 2008, the House Committee on Government Oversight and Reform held hearings on the financial aspects of the current DBA program. In preparation for those hearings, the Committee staff asked for and received detailed financial information from the top four DBA insurers. That information appeared to indicate an unusually high level of underwriting gains by those insurers and implied that the single-provider programs of DOS and the U.S. Agency for International Development (USAID) offered a more affordable approach to acquiring DBA coverage. At that time, the Department's own pilot program had not yet been fully evaluated for efficacy and cost-effectiveness. Partly as a result of those hearings, the National Defense Authorization Act for Fiscal Year 2009 (Public Law 110-417) included a requirement (in Section

843) that the Secretary adopt an acquisition strategy for DBA insurance that minimizes the cost of such insurance for both the Department and its contractors. It also required the Department to submit a report to Congress, within 270 days of the law's enactment, on the acquisition strategy adopted.

In response to that direction, the Department undertook an extensive market research effort to gather information from both industry (for example, brokers, insurers, and defense contractors) and government (including DOL, DOS, USAID, and organizations that have made self-insurance arrangements for workers compensation in other circumstances). That effort also included obtaining data on DBA insurance costs, premium rates, and related information from contracting organizations throughout the Department. This entire effort was conducted without any bias and without any preconceptions as to the most beneficial strategy for the Department to use for the acquisition of DBA insurance coverage.

At the outset, the Department posited an initial set of eight alternatives and published a request for input from industry with respect to those alternatives; the Department also sought the views of key stakeholders concerning factors that influence the cost and availability of DBA insurance. In addition, through the published request and face-to-face interviews, the Department sought financial data from the largest DBA insurers similar to the data that had been provided to the Congress in early 2008. Notably, none of the DBA carriers provided any such data to the Department.

In response to its internal data call, the Department received specific premium rate and premium amount information on 229 prime contracts involving 375 prime and subcontractors. This information showed total premiums of \$282 million for the open-market DBA program. In addition, information on the USACE single-provider program added a premium amount of approximately \$45 million. Together, the premiums reviewed totaled more than \$325 million. This premium information showed that the weighted average rates in the open market were significantly lower than those in the single-provider program for all locations worldwide, for the Iraq and Afghanistan theaters specifically, and for all other locations. The single-provider rates were 51 percent higher for contractors in Iraq and Afghanistan and a striking 90 percent higher for those in all other locations. Clearly, although the single-provider program served a positive purpose in making DBA insurance available, without any minimum premiums, to all those seeking coverage, the program has not provided the expected cost savings.

Considering the large scale of its comparison of single-provider premium rates with open-market rates, the Department believes it is fair to conclude that an open market for DBA insurance is preferable. This does not mean, however, that the open-market approach cannot be improved. This report contains several recommendations for such improvements that should ensure access to DBA insurance for all parties seeking it and should lower, if not eliminate the use of minimum premiums. This report also provides some additional information that could potentially improve competition within that market.

One of the additional findings from this market research, alternative analysis, and strategy development effort is the potential for significant savings from a government self-insurance approach to DBA coverage. From analyses of the data provided to the congressional Committee by the largest DBA carriers, as well as data from other sources, it appears that the DBA insurers



may be achieving significant underwriting gains on this line of business. Insurance carriers' expense structures also include some significant costs (broker commissions, underwriting, sales and marketing, and so on) that could be entirely avoided under a government self-insurance approach.

In addition to recommending an open-market approach (with improvements), the Department is also considering the pursuit of legislative authority to allow self-insurance for DBA coverage government-wide (that is, all agencies whose contractors and subcontractors may require such coverage) and, if such a program is adopted, the use of private-sector third-party administrators. Because neither the Department nor DOL has the statutory authority to undertake a self-insurance initiative for DBA coverage, the Department will continue to work with DOL to determine the best way to proceed with a government self-insurance approach, particularly implementation and administration of the program, and to estimate the initial DOL start-up and program maintenance costs associated with a self-insurance alternative. However, it is unlikely that a well-developed plan, including estimates of resource requirements and a legislative proposal, could be fully implemented within the time frame specified in Section 843. The Department would like to continue working with DOL to develop a self-insurance approach, because it would also effectively eliminate the need to distinguish between DBA coverage and WHCA reimbursement and would virtually ensure that no prime or subcontractor employee would risk not having workers compensation coverage.

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## Abbreviations

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AIG	American International Group, Inc.
APS-3	Army Prepositioned Stock
CNA	Continental Casualty Company
DBA	Defense Base Act
DOD	Department of Defense
DOE	Department of Energy
DOL	Department of Labor
DOS	Department of State
FECA	Federal Employees Compensation Act
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
JCC-IA	Joint Contracting Command–Iraq/Afghanistan
LHWCA	Longshore and Harbor Workers’ Compensation Act
LOGCAP	Logistics Civil Augmentation Program
MRAP	Mine Resistant Ambush Protected
NCCI	National Council on Compensation Insurance
NDAA	National Defense Authorization Act
USACE	U.S. Army Corps of Engineers
USAID	U.S. Agency for International Development
WHCA	War Hazard Compensation Act

## Section 1

### Statutory Requirements and Purpose

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The Defense Base Act (DBA) (42 U.S.C. 1651 et seq.) provides workers compensation type insurance coverage for contractor employees performing under government contracts outside the United States. The House Committee on Oversight and Government Reform obtained data from the major DBA insurers and held a hearing on May 15, 2008. At the hearing, representatives of the Department of Defense (DOD), as well as the Department of Labor (DOL) and Government Accountability Office (GAO), testified. As a result of the hearing and analysis of the data provided to the Committee by the largest DBA insurers, questions remained about the seemingly high cost of the DBA premiums being paid by DOD’s contractors and the potential savings that the Department could realize by adopting an alternative acquisition strategy for DBA insurance. Because of those questions and similar concerns, Congress, in Section 843<sup>1</sup> of the National Defense Authorization Act (NDAA) for Fiscal Year 2009 (Public Law 110-417), directed the Department to develop an acquisition strategy for DBA insurance and to report on the acquisition strategy adopted.

Paragraph (a) of Section 843 establishes the overarching goal of the strategy to be adopted: minimize the cost of DBA insurance both to DOD and to defense contractors subject to the act.

Paragraph (b) of Section 843 specifies five criteria to be considered when selecting an acquisition strategy:

- ◆ Minimize overhead costs associated with obtaining such insurance, such as direct and indirect costs for contract management and contract administration
- ◆ Minimize costs for coverage of such insurance consistent with realistic assumptions regarding the likelihood of incurred claims by contractors of the Department
- ◆ Provide for a correlation of premiums paid in relation to claims incurred that is modeled on best practices in government and industry for similar kinds of insurance
- ◆ Provide for a low level of risk to the Department
- ◆ Provide for a competitive marketplace for insurance required by the DBA to the maximum extent practicable.

Paragraph (c) of Section 843 requires consideration of one specific acquisition alternative: enter into a single DBA insurance contract. Otherwise, Section 843 does not circumscribe or limit the potential acquisition strategy options that the Secretary of Defense could consider.

Paragraph (d) of Section 843 requires a report from the Secretary, within 270 days of enactment, that discusses each of the alternatives considered in terms of the specified criteria and the extent to which each addresses those criteria. It also requires the report to include a plan to implement the selected acquisition strategy within 18 months of the law’s enactment—that is,

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<sup>1</sup> Appendix A contains Section 843 of the NDAA, which was signed into law on October 14, 2008.



within 9 months after the report's required submission date. Lastly, the law requires that the Department review its DBA acquisition strategy, in terms of the criteria above, not less often than every 3 years.

This report constitutes the Department's response to Section 843's requirements:

- ◆ Section 2 provides an overview of DBA insurance, including a comparison of its attributes to those of stateside workers compensation.
- ◆ Section 3 describes the sources of data and information that the Department used to develop alternative acquisition strategies and describes the activities undertaken by the Department to respond to the congressional mandate.
- ◆ Section 4 describes the characteristics of the specific alternative strategies considered and the input sought from industry.
- ◆ Section 5 summarizes the responses received from industry.
- ◆ Section 6 summarizes data obtained from the Department's contracting activities about the DBA premiums being paid by contractors.
- ◆ Section 7 provides a qualitative evaluation of the alternative strategies considered by the Department as well as an analysis of those alternatives in terms of how well they satisfy the five criteria specified in the law.
- ◆ Section 8 integrates the data and information gathered from the market research and the results of the qualitative evaluations. It then recommends two strategies for acquiring DBA insurance.
- ◆ Section 9 discusses the actions required by all stakeholders to implement the preferred alternatives and proposes a timeline for such implementation.

## Section 2

### DBA Overview

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The Defense Base Act was enacted in 1941 to provide workers compensation insurance coverage for contractors working on military bases overseas. It was subsequently amended to provide coverage for contractor employees working in support of U.S. government activities in a variety of settings—not just on military bases. The DBA was intended to be a direct counterpart to domestic workers compensation insurance programs; it provides coverage for injuries or deaths arising in the course of employment and is to be the sole, no-fault recourse for covered employees.

However, DBA insurance does not and was never intended to provide coverage for injuries or death arising from a war hazard. The federal government, pursuant to the War Hazard Compensation Act of 1942 (WHCA), self-insures for claims arising from those hazards and pays for them out of the Federal Employees Compensation Act (FECA) fund. When an injury to or death of a DBA-covered contractor employee occurs as a result of a war hazard, the DBA insurer handles the claim until it is “relatively fixed,” at which time the insurer can file a request to DOL for reimbursement under the WHCA.

Both the DBA and WHCA programs are overseen and administered by DOL. Under the DBA program, DOL prequalifies insurers that may offer that type of insurance coverage, acts as a facilitator to resolve disputes between insurance carriers and claimants, and offers an administrative appeal process (utilizing administrative law judges) for the resolution of disputes that are not settled in the facilitated process.

#### **A. DBA Volume Increase**

Until the significant increase in military operations in Afghanistan and Iraq, and the concurrent increase in the use of contractors to provide logistical support to those operations, the DBA insurance market was a rather small and specialized subset of the casualty insurance marketplace. For example, in 2002, total premiums paid to the four largest DBA insurance providers amounted to less than \$20 million.<sup>2</sup> In comparison, total government-wide premiums in 2007 for those same carriers exceeded \$440 million—a twentyfold increase. Similarly, no more than a few hundred DBA claims were filed in 2002, while in 2007, the number of claims increased to more than 10,000.<sup>3</sup>

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<sup>2</sup> Based on information provided to the House Committee on Oversight and Government Reform in a May 15, 2008, Memorandum from the Majority Staff, total DBA premiums received by the four largest DBA insurance providers from 2002 through 2007 were as follows: \$18,078,902 (2002); \$74,452,255 (2003); \$272,181,736 (2004); \$462,560,542 (2005); \$427,580,701 (2006); and \$440,687,778 (2007).

<sup>3</sup> DOL Deputy Secretary Seth D. Harris, Statement before the Domestic Policy Subcommittee, House Committee on Oversight and Government Reform, June 18, 2009.

## **B. How DBA Differs from Stateside Workers Compensation**

Although DBA insurance is often characterized as being “just like traditional domestic workers compensation, only it happens overseas,” it has several striking differences that present a significant challenge when trying to apply traditional workers compensation insurance principles to it. Below are some of the key differences:

- ◆ *DBA insurance lacks extensive data on losses.* In contrast to the domestic workers compensation marketplace, DBA insurance does not have extensive data on workplace injuries. Domestically, there are decades of workplace injury data by location, employer, labor classification, and severity, enabling insurance company actuaries to forecast risk and set reasonable premium rates. A nonprofit organization, the National Council on Compensation Insurance (NCCI), collects and publishes the data for states whose programs are structured based on these comprehensive loss data. The domestic data are broken down into more than 600 different labor classifications. In contrast, no extensive or long-term data on DBA workplaces and labor classifications exist other than those created by the individual DBA insurers themselves. Also with domestic workers compensation, the vast majority of the workplaces covered are subject to significant workplace standards and regulations (for example, Occupational Safety and Health Administration, Environmental Protection Agency, and state and local regulatory entities). In contrast, the locations where DBA-covered contractors are working may change significantly over time and from time to time, thus affecting the risk levels associated with the work. Also, because of the relatively short span of time of the recent significant buildup of DBA-covered contractors, insufficient data exist to make sound actuarial projections of injury incidence and severity.
- ◆ *DBA coverage extends beyond the workday and involves longer work hours.* Domestic workers compensation coverage extends only to on-the-job time periods, typically with known and predictable work hours and pace. In contrast, DBA coverage may extend to a larger portion and in some cases the entirety, of the employee’s day, due to the “zone of special danger” doctrines and their expansion to include the “reasonable recreation” concept established by the courts.<sup>4</sup> Not only do DBA-covered workers have much longer normal work hours, but their work paces (“op tempo”) are often much higher.
- ◆ *DBA work locations often lack adequate medical care.* DBA-covered workers are often performing in locations where there is little or no proximate access to adequate medical care for work-related injuries. Severe injuries may require medical evacuation from the work location to other countries or to in-country locations far removed from the worksite where the injury occurred.

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<sup>4</sup> The “zone of special danger” doctrine applies to DBA claims in a war zone and are based on the premise that the test of recovery is not a causal relation between the nature of employment of the injured person and the accident. Nor is it necessary that the employee be engaged at the time of the injury in activity of benefit to his/her employer. All that is required is that the “obligation or condition” of employment create the “zone of special danger” out of which the injury arose. The “reasonable recreation” concept provides that employees working under the DBA far away from their families and friends, in remote places where recreational and social activities are severely limited, are in different circumstances from employees working at home. Personal social or recreational activities must be considered as incident to the overseas employment relationship.

- ◆ *DBA payouts may be longer due to younger workforce.* The domestic workplace has a relatively broad mix of employee ages. However, in many DBA-covered locations (especially those in or near war zones), the workforce has been consciously screened for health and age. As a result, if disabling injuries occur, the payout period for rehabilitation and for full or partial disability payments may be longer and more expensive because the age of the workforce tends to be lower on average than in the domestic environment.
- ◆ *DBA payments involve multiple currencies and geographic locations.* DBA insurance payments to claimants as well as to care providers often are made in a variety of foreign currencies and geographic locations. For example, a DBA-covered contractor employee from the Philippines working in Iraq who suffers a severe work-related injury could have initial payments for medical care made to providers in Iraq, then in Jordan, and finally in the Philippines, and any disability payments would have to be paid in the Philippines. Domestic workers compensation cases do not involve these types of payment issues.
- ◆ *DBA claims adjudication involves language and cultural differences.* Adjusting and investigating claims under DBA present a host of unique challenges not faced in domestic workers compensation situations. Claims adjusters deal with language, religious, and cultural differences that are unlikely to be found in a domestic workers compensation case. For example, a case of a severe injury or death to a DBA-covered worker who is either a host-country or third-country national could require investigations to identify legal dependents or heirs in several foreign locations. Similarly, making payments to legal dependents or heirs could be further complicated by cultural norms and practices. For example, in some countries, the cultural norms do not allow the widow of a spouse who dies to accept the death benefit, so special arrangements are made to make payment to another party, who then ensures that the widow obtains the benefit.
- ◆ *DBA insurers may have to expend significant funds for claims involving death or injury arising from war hazards, before being reimbursed by the DOL WHCA program.* Although DBA policies specifically exclude war hazard coverage, DBA insurers may, in fact, have to expend significant resources dealing with war hazard injury or death claims for an extended period of time before being able to seek reimbursement from DOL. DOL regulations provide that potential WHCA claims be submitted when the cases are “relatively fixed.” In addition, in some cases, payments already made by DBA insurers may not be fully accepted for reimbursement under WHCA by DOL. Also, preparing and presenting requests for WHCA reimbursement can involve significant additional time and effort. The time frame to reach final settlement of such claims can be as long as 7 years. Moreover, when DBA insurers are finally reimbursed, there is no direct recognition in such payments for the time value of the money the insurer has spent handling a WHCA claim.<sup>5</sup> One major carrier indicated that WHCA claims represented less than 10 percent

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<sup>5</sup> However, under the reimbursement provision of the WHCA, DBA insurers are entitled to reimbursement of reasonable and necessary claims expenses associated with the handling of the DBA claim. The DOL regulations divide reasonable and necessary claims into two types of expenses: allocated expenses (expenses such as attorney fees and court costs that can be itemized) and unallocated expenses (expenses that cannot be itemized). Under DOL regulations, carriers can claim up to 15 percent of the sum of the reimbursable payments made under the DBA, as unallocated expenses. See 20 C.F.R. § 61.104.

of its total cases, but another carrier classified approximately 77 percent of the DBA case dollars as potential WHCA claims.

### **C. Financial Aspects of DBA Insurance**

In most policies, DBA insurers agree to provide coverage for a fixed rate or set of rates (typically stated in terms of dollars per \$100 of payroll) and for a fixed period (typically, 1 year). In return for the payment of the premium,<sup>6</sup> the DBA insurer accepts the financial risk of being responsible for all claims arising from work-related injuries or deaths during the policy period.

Workers compensation insurance claims are often referred to as having a long “tail;” in other words, the insurer retains full financial responsibility for the complete resolution of claims that arise during the time the policy of coverage is in effect, no matter how long that may take. DBA claims tend to have a somewhat longer “tail” than domestic workers compensation claims. For WHCA claims, the final length of that “tail” is, to a certain extent, controlled by the WHCA reimbursement request review and payout process overseen by DOL.<sup>7</sup>

The typical financial profile of the domestic workers compensation insurance industry is that its losses and expenses are equal to its earned premiums. In industry parlance, this would be operating at a “combined ratio” of approximately 100. The combined ratio is the result of combining an insurer’s “loss ratio” and “expense ratio” and comparing that amount to the premiums earned in a period. The loss ratio includes those amounts currently paid on currently incurred claims as well as amounts reserved for additional payments in the future on those same claims. The expense ratio includes expenses for such things as broker commissions, underwriting, claims administration and related costs, sales and marketing, and where applicable, dividends to participants. Typically, workers compensation insurers operate at a loss ratio of 60 to 70 percent and an expense ratio of 30 to 40 percent.

Because the ratios are expressed as percentages, a combined ratio of 100 means that the insurer’s losses and expenses are equal to its earned premiums. Ratios below 100 indicate the presence of underwriting gains, while ratios above 100 indicate the presence of underwriting losses. However, even with a combined ratio of 100 (and thus having no underwriting gains), workers compensation insurers may still make a profit from the business line. Profits may arise from the investment returns on the premium dollars held by the insurer that are not currently required to pay out claims and to cover expenses, and from the ultimate settlement of claims at levels less than had been previously reserved.

The Department has no set of comparable data showing the combined loss and expense ratios for the DBA insurance industry. However, data provided to the Committee by the four largest

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<sup>6</sup> Typically, the only variable in the amount of premium due for the policy period is the amount of payroll that was actually experienced during the coverage period. Most policies provide for a post-policy period “true up” of payroll data from which the final premium amount due is established.

<sup>7</sup> DOL does not have an early warning system or process in place that informs it about claims that are first being handled by DBA insurers but which are likely to turn into WHCA reimbursement claims by those insurers. As a result, data currently being reported on the amount of WHCA payments made to date by DOL do not reflect the entire level of reimbursement payments that may eventually be made to DBA insurers.



DBA insurers for 2002 to 2007 appear to indicate a combined ratio of significantly less than 100, which translates to higher profitability.<sup>8</sup>

**D. How DBA Insurance Is Acquired**

Until recently, all DOD contractors have been able to obtain DBA insurance from any insurer on the list of approved carriers maintained by DOL or to self-insure, if approved by DOL. In 2005, the Department began a pilot program conducted by the U.S. Army Corps of Engineers (USACE) to competitively select a single DBA insurer to provide coverage under contracts awarded by that organization as a way of testing whether such an approach would, in fact, lead to some savings in premiums. Subsequently, in October 2008, the scope of the USACE program was expanded to include contracts issued by the Joint Contracting Command–Iraq/Afghanistan (JCC-IA).<sup>9</sup>

This pilot program was modeled extensively along the lines of similar single-provider arrangements that have been in use for some time at both the Department of State (DOS) and U.S. Agency for International Development (USAID). As has been the case with the latest DOS and USAID contracts, the competition conducted by USACE for its pilot program and follow-on contract received only one bid. Thus, all three programs are served by the same carrier, Continental Casualty Company (CNA). Currently, the single-provider rates range from about \$3 to \$20 (per \$100 of payroll), as shown in Table 1.<sup>10</sup>

*Table 1. Current Single-Provider Rates for DOD/USACE, DOS, and USAID*

Labor category	Single-provider program DBA rates		
	USACE <sup>a</sup>	DOS <sup>b</sup>	USAID <sup>c</sup>
Services	\$4.00	\$3.60	\$3.25
Construction	\$7.50	\$4.95	\$4.50
Security	\$12.50		
Security without aviation exposure <sup>d</sup>		\$9.45	
Security and aviation			\$9.00
Aviation with exposure <sup>d</sup>		\$18.00	
Aviation	\$20.00		

<sup>a</sup> The most recent USACE single-provider contract was effective October 1, 2008.

<sup>b</sup> The most recent DOS single-provider contract option was effective July 22, 2009.

<sup>c</sup> The most recent USAID single-provider contract was effective May 30, 2009.

<sup>d</sup> With, or without, aviation exposure within Global War on Terrorism designated areas.

<sup>8</sup> The Committee’s (House Committee on Oversight and Government Reform) May 15, 2008 memorandum, *Supplemental Information on Defense Base Act Insurance Costs*, indicated potential underwriting gains of approximately 39 percent from the information the insurance companies provided.

<sup>9</sup> In the balance of this report, the USACE program is referred to interchangeably as both the USACE pilot program and the USACE single-provider program.

<sup>10</sup> It is notable that several of the single provider rates (e.g., security) are comparable to the open-market rates referenced as too high by Government Accountability Office in *Defense Base Act Insurance: Review Needed of Cost and Implementation Issues*, GAO-05-280R, April 29, 2005.



## **E. DBA Waivers**

The DBA allows the Secretary of Labor, upon the recommendation of the head of a department, to waive its application “to any contract, subcontract or subordinate contract, work location under such contracts, or classification of employees.”<sup>11</sup> DOL will not grant a waiver for citizens or legal residents of the United States and employees hired in the United States, but it will grant waivers for foreign nationals, *if* acceptable workers compensation benefits are provided by applicable local law. Presently, individual contracting organizations within the Department prepare and process waiver requests to DOL; there is generally no higher Defense Department-level coordination or administration of requests for, or granting of, such waivers.<sup>12</sup>

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<sup>11</sup> 42 U.S.C. Section 1651(c) and Federal Acquisition Regulation 28.305 (d) and (e), 28.309(b), and 52.228-4.

<sup>12</sup> Request for waivers, however, are coordinated at a higher Army level under the USACE pilot program.

## Section 3 Method

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As a part of the process for developing and evaluating alternative strategies for acquiring DBA insurance, the Department undertook a variety of market research efforts and considered both quantitative and qualitative information from several sources. The Department began this work with no preconceived solutions, and purposely left the search for viable alternatives as wide open as possible so that a range of potential alternatives could be proposed and evaluated. Data and information were gathered from a host of sources and were used both to support the analysis and to focus on the key distinguishing characteristics of the alternative approaches being considered.

In general, the Department gathered and analyzed two types of information:

- ◆ Qualitative information from stakeholders in industry and government
- ◆ Quantitative factual data about DBA insurance, the casualty insurance industry, and other financial information.

The goal was to obtain both perspective and understanding from as many relevant and knowledgeable sources as were willing to participate in the market research and outreach activities. This section provides an overview of the information sources used in this effort.

### **A. Request for Input from Industry and Any Other Interested Parties**

To obtain comments and recommendations from as broad a cross-section of industry stakeholders as possible, the Department prepared and posted a request for industry input in both the Federal Register and Federal Business Opportunities (FedBizOps).<sup>13</sup> The Department also provided copies of the request for industry input to government contractor trade association representatives who agreed to notify their members of the request.

The request for industry input included several questions and issues concerning classes of acquisition strategy alternatives, as well as more general, open-ended issues such as the primary drivers of DBA insurance costs, the main stakeholders in DBA insurance, the importance of claims management, and the best way to address claims efficiently and fairly. Also, the request directed certain questions specifically to brokers, carriers, and DOD contractors regarding their experience with DBA insurance and best practices. Section 4 of this report contains a more detailed discussion of the request for industry input.

### **B. Interviews**

The Department interviewed and held discussions with a variety of stakeholders representing both government and industry. Interviews and discussions with government stakeholders included representatives of DOL, DOS, USAID, USACE, JCC-IA, the Department of Energy

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<sup>13</sup> Appendix B contains a copy of the request as posted in FedBizOps.

(DOE), and the Marine Corps's non-appropriated fund activity. Specific interview sessions with DOL representatives included personnel responsible for overseeing the DBA program, the WHCA program, and the FECA program.

The Department's discussions with industry stakeholders included representatives of four of the largest DBA insurance carriers, several major defense contractors, government trade association representatives, several insurance brokers,<sup>14</sup> a third-party administrator for several non-appropriated fund activities, and a representative of a large captive<sup>15</sup> insurer under the Longshore and Harbor Workers' Compensation Act (LHWCA) insurance program. The primary focus of the interviews and discussion sessions held with industry was to obtain free and frank discussion of the current state of the DBA and WHCA programs, perspectives on alternative DBA insurance acquisition strategies, and any other views relevant to the development and evaluation of alternative acquisition strategies.

### **C. Department Data Call**

The Department requested the military services and defense agencies that have awarded contracts requiring DBA insurance to provide factual information on the total premiums and premium rates that DOD prime contractors and subcontractors paid for DBA coverage in the current policy period.<sup>16</sup> The data call requested the following information for each relevant prime and subcontract:<sup>17</sup>

- ◆ Prime or subcontractor's name
- ◆ Contract (or subcontract) number, dollar value and type, and program name
- ◆ Type of work being performed and primary place of performance (war zone—Iraq or Afghanistan—or non-war zone)
- ◆ Insurance company providing DBA coverage
- ◆ Number of employees covered by the DBA insurance and annual DBA insurance premium
- ◆ DBA premium rate (expressed as dollars per \$100 of covered payroll costs)
- ◆ Certain other information about the DBA insurance arrangements and policies, such as fixed versus retrospective.

The data were collected to assess the rates that DOD contractors were securing for DBA insurance in the open market, to compare those rates with the DOD single-provider acquisition

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<sup>14</sup> Brokers included the broker for the USACE, DOS, and USAID single-source programs and the broker with the largest DBA insurance coverage.

<sup>15</sup> In the insurance industry, "captive" is defined as an insurance company that has as its primary purpose the financing of the risks of its owners or participants. In the sense used in this report, the captive would be considered an "association captive" because the government would be the owner and the participants or beneficiaries would be the employees of prime and subcontractors.

<sup>16</sup> The current policy period represents approximately the 2008 and 2009 time frames.

<sup>17</sup> Appendix C contains a copy of the Department's internal data request.

strategy, to examine rate differences by location, to determine premiums by location, contractor, DOD Component, insurance carrier, and so forth. Section 6 of this report describes the results of this analysis.

#### **D. Other Data**

The Department examined and evaluated data contained in the majority staff report to the House Committee on Oversight and Government Reform, which had been provided to the Committee in Spring 2008 by the four largest DBA insurers. Also, the Department received and reviewed updated information from DOL on the number of DBA claims and the payments and insurer reimbursements made under the WHCA program, as well as detailed reports regarding the number of DBA-covered incidents by geographic location, by insurer, and by employer.

To gain an appreciation of the general financial performance of insurers in the domestic workers compensation market, the Department reviewed data published by NCCI, which maintains the largest warehouse of domestic workers compensation data. DOD evaluated the data for information about typical loss and expense ratios.

In addition, the Department reviewed several GAO reports, including two on the cost and implementation issues of DBA insurance<sup>18</sup>, as well as a report that identified all the areas under which the government self-insures<sup>19</sup> (including the National Flood Insurance Program).<sup>20</sup> The purpose of these reviews was in part to gain insights into the financial performance of those programs and to evaluate expense ratios found in other insurance programs and markets. The Department also reviewed two Congressional Budget Office reports that included qualified recommendations that a single-provider program be considered for all of DOD.<sup>21</sup> In addition, DOD reviewed a Congressional Research Service report<sup>22</sup> on DBA insurance to gain an overview of the history of DBA insurance and potential solutions.

The Department gained a better understanding of standard industry practices with self-insurance captives by reviewing literature on the topic.<sup>23</sup> The Department also interviewed representatives of government organizations that currently self-insure for workers compensation coverage under the LHWCA and state workers compensation programs, specifically, the Marine Corps Non-Appropriated Funds Instrumentality and the DOE Hanford site. In addition,

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<sup>18</sup> GAO-05-280R, *Defense Base Act Insurance: Review Needed of Cost and Implementation Issues*, April 29, 2005; and GAO Testimony Before the Committee on Oversight and Government Reform, House of Representatives, *DEFENSE CONTRACTING Progress Made in Implementing Defense Base Act Requirements, but Complete Information on Costs Is Lacking*, May 15, 2008.

<sup>19</sup> Government Accountability Office, *Catalogue of Federal Insurance Activities*, GAO-05-265R, March 2005.

<sup>20</sup> Government Accountability Office, *National Flood Insurance Program: FEMA's Management and Oversight of Payments for Insurance Company Services Should Be Improved*, GAO-07-1078, September 2007.

<sup>21</sup> The subject Congressional Budget Office reports were dated February 25, 2005, and February 23, 2007.

<sup>22</sup> The subject Congressional Research Service report was dated September 15, 2008.

<sup>23</sup> Towers Perrin Tillinghast, *Captives 101: Managing Cost and Risk* and *TRACS: The Road to Successful Captive Management*.



Department personnel attended a 2-day workshop on Defense Base Act insurance at which DOL and industry representatives presented multiple topics relevant to the subject.<sup>24</sup>

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<sup>24</sup> Loyola University sponsored the Defense Base Act workshop in Washington, DC, on October 23 and 24, 2008.

## Section 4

### **Alternatives Considered and Request for Industry Input**

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As mentioned in the preceding section, the Department posted an extensive list of questions and issues for industry comment in order to gain an understanding of the perspectives and opinions of those directly involved in DBA insurance—that is, those who provide such insurance as well as those who purchase it. The postings consisted of approximately five pages of questions specific to the set of alternatives being considered for the acquisition of DBA insurance. The intent was twofold: obtain a free and frank dialogue from those potentially most directly affected by the selection of a specific acquisition strategy for DBA insurance, and assist the Department with evaluating alternative strategies and gauging the various stakeholders’ responses to the alternatives presented.

The FedBizOps posting was open for approximately 20 days, and the Federal Register notice was open for 7 days. Because the postings were not concurrent, industry input was sought over a period of about 1 month. The Department granted extensions for responses in all cases.

#### **A. Acquisition Alternatives Considered**

The Department sought a wide-ranging discussion of and suggestions for as many alternative DBA insurance acquisition strategies as possible. To ensure receipt of comments on certain potential alternatives, the request for industry input listed eight alternatives and asked for additional suggestions for alternatives. The eight alternatives were as follows:

1. Single-provider contract awarded on a competitive basis, issued and administered by the Department
2. Multiple-award contract awarded on a competitive basis, issued and administered by the Department
3. No change (for example, requiring contractors to obtain appropriate DBA insurance on their own from among the list of DOL-approved providers)
4. Government self-insuring for DBA losses while contracting to the private sector for program administration and claims processing
5. Government self-insuring, with DOD and DOL employees performing all administrative and claims processing functions
6. General Services Administration (GSA)-type schedule with a set of maximum rates, which may include awards based on geographic location of the work to be performed or based on the nature of the work to be performed, with competition for each major contract (a vehicle structured similar to some stateside workers compensation policies)
7. Selection from a list of prequalified DOD-approved DBA carriers and brokers or agents that meet a predetermined set of criteria or qualifications to provide DBA insurance from which contractors would be required to obtain appropriate DBA coverage

8. Contractors self-insuring either individually or through a pool of contractors, with provisions concerning how a pool participant would avoid adverse selection.<sup>25</sup>

Neither the formal responses received to the posted questions for industry nor the individual discussions with government and industry representatives generated any additional alternatives beyond this set.

The Department also asked specific questions related to several of the alternatives above, including whether the insurance carriers would be willing to bid on a DOD-wide single-provider contract, and why or why not. In addition, DOD requested input on whether one provider could handle all claims associated with DOD’s DBA insurance requirements and what the market implications would be of having only one provider for DBA insurance for all of DOD. Likewise, the Department asked for recommendations and rationale regarding the basis for dividing multiple awards by geographic location, by type of work performed, by military service, or by some other category.

Another issue concerned minimum policy amounts. Specifically, the Department asked for recommendations for the structure of a single-provider or multiple-provider contract to decrease the potential for having minimum premium amounts. Regarding the alternative of DOD directly self-insuring contractor DBA losses, the Department requested input on the relative advantages and disadvantages of contracted administration compared to in-house government administration.

## **B. Questions for Brokers and Carriers**

The Department requested input from industry on a range of issues, including the following:

- ◆ Ways to ensure broad industry participation given the limited pool of qualified carriers and brokers or agents
- ◆ Rating approach in light of the underwriting and service complications of DBA’s long-tail catastrophic liability and the absence of adequate loss history
- ◆ Aggregate loss and development information such as medical, lost wages, reserves, adequate medical care, evacuation, and infrastructure expenses; administrative costs; appropriate support services; and rates of return on invested insurance premiums
- ◆ Experience in structuring loss-sensitive rated DBA programs and suggestions regarding structures for such retrospective rating plans
- ◆ Costs of finding sources of adequate medical care in countries where standard of care may be insufficient

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<sup>25</sup> The term “adverse selection” is defined as the prospect or reality that those seeking coverage will show a markedly different (and less favorable) risk profile and likelihood of incurring covered claims than would a normal distribution of the same population.





- ◆ Percentage of DBA claims initially believed to be WHCA claims and percentage that are later determined by DOL not to be WHCA claims, as well as the length of time for DOL to settle and reimburse DBA and the average percentage of submitted claims reimbursed.

### **C. Questions for Defense Contractors**

The following are key issues targeted to defense contractors:

- ◆ Current practice for acquiring DBA insurance (purchase or self-insure) and, if purchased, whether it is part of a standalone policy or a multiline program
- ◆ Extent to which DBA coverage is supplemented with medical assistance or additional life or disability coverage
- ◆ Policies concerning whether prime contractors purchase DBA insurance for subcontractors (at all tiers) or require subcontractors to obtaining their own coverage
- ◆ Discounts obtained by including DBA insurance with other insurance coverage
- ◆ Impact of safety record on insurance rates.

## Section 5 Summary of Industry Response

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The Department received 17 responses to its request for industry input. Table 2 categorizes respondents based on their role in DBA insurance.

*Table 2. Number of Industry Responses*

Type of respondent	No. of responses
DBA carrier	2
DBA insurance broker	6
Contractor	7
Other	2
Total	17

Although it would have been preferable to have received responses from a larger number of stakeholders (particularly defense contractors), the insurance carrier and broker respondents represent significant stakeholders in the market with substantial experience and understanding of DBA insurance. Almost all broker and carrier respondents have a minimum of 20 years of experience with DBA insurance and serve many clients worldwide, as shown in Table 3.

*Table 3. Insurance Broker and Carrier Respondent Characteristics*

Type of respondent	Years in business	Number of clients	Participation in foreign countries	Annual premium volume	Payroll exposure
Broker	20+	100+	50+	\$200M	
Broker		50+ large	Worldwide	\$200M	\$2.7B
Broker	30	1,800	Worldwide	\$80M	
Broker	30+	300		\$750M	\$15B
Broker	30+	100+	Worldwide	\$10M	
Broker	9				
Carrier	30+		Worldwide		
Carrier	45	1,500+	Worldwide		

## **A. Responses to Questions on Acquisition Alternatives**

The following subsections summarize the responses related to the eight alternative DBA acquisition strategies.

### **1. Single-Provider Contract**

Questions referring to single-provider contracting solicited the most responses. Five of the six brokers said that none of the insurance companies would be interested in bidding on a DOD-wide single-provider contract, and one reported that only the current USACE single-provider carrier might be willing. One of the largest DBA carriers commented that it would entertain the possibility of bidding on a single-provider contract, depending on the contents of the solicitation. That carrier also commented that it was difficult to imagine how such an approach would be more cost-effective for DOD than an open-market approach. Two DBA insurance carriers also indicated that they would not bid on a DOD-wide single-provider contract. As one carrier noted, “a single-source program would ultimately result in higher DBA costs for the DOD.” The contractors noted that a single DBA insurance carrier would be unable to pay all DBA claims due to the vastness and variety of contracted work, which would ultimately lead to increased costs and decreased service quality.

Key comments from the written responses were as follows:

- ◆ Under this alternative, the carrier would be required to insure all contractors, and contractors would have no incentives to minimize risks.<sup>26</sup>
- ◆ A competitive marketplace would be eliminated; competition among carriers is key to controlling costs.
- ◆ The long tail of DBA claims settlement and uncertain reimbursement for WHCA claims would disincentivize a carrier from wanting to cover the entire DOD market.
- ◆ It is unlikely that any single insurer would be capable of handling underwriting and claims management for all of DOD.
- ◆ Claims handling could be detrimentally impacted because the insurer would have no incentive to enhance services.
- ◆ “Averaging” (respondent used “commoditization”) of rates to cover high-risk parties does not reward insured parties that mitigate losses.
- ◆ This alternative could result in either windfall profits or huge losses (because of the extent of unknown risk), neither of which is a good solution.
- ◆ Ultimately, costs would be higher.

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<sup>26</sup> The insurance industry refers to this as moral hazard, which is the likelihood that those who have transferred some or all of the risk of their actions or behavior (by acquiring insurance) will behave in a manner significantly different than they would have had that risk not been fully or partially transferred.

- ◆ Contractors would have no incentive to invest in safety and loss prevention measures, which in turn would exacerbate frequency and severity of losses, ultimately increasing premiums.
- ◆ Underwriting DBA insurance in war theaters is difficult and requires extensive servicing and capital commitment over long periods; therefore, DOD should avoid a strategy of no interest to the few carriers who are committed to providing DBA insurance.
- ◆ Scope and hazards of work performed by DOD contractors differ greatly from that performed by contractors for DOS, USAID, and USACE.
- ◆ Because rates would be fixed, the insurer would be insulated from falling rates for the remainder of the contract if the market for DBA insurance softened.
- ◆ Insufficient historical data regarding claims, claims development, payroll classifications, and employee counts would preclude prudent underwriting for all of DOD.
- ◆ The number, size, locations, and diversity of DOD contracts overseas preclude a single-provider approach.
- ◆ The provider would be unable to effectively adjust rates for the term of contract.
- ◆ The provider would have a monopoly that can be leveraged to secure other lines of insurance.
- ◆ Current best practices for claim services and vendors would be endangered.

## 2. Multiple-Provider Contract

The intent of this alternative is to have multiple awardees based on a single competition, with a division of awards, for example, by geographical location, type of work, or war zone versus non-war zone. Respondents reported that this option has advantages and disadvantages similar to a single-provider award. One of the main advantages of a multiple-provider contract is that pooling of like exposures could enable insurers to develop a better understanding of these exposures. At the same time, however, it increases exposures to risks because of the potential for adverse selection. Any means of dividing the DBA market into pieces would not prevent the existence of adverse selection, in that a wide and unknown array of risks is involved.

Other comments were as follows:

- ◆ The potentially broader divergence of risk exposures could minimize exposure to catastrophic events; however, there would be no guarantee that all awardees would be saddled with same number or type of “questionable” clients or exposures.
- ◆ In the long-run, this alternative would preclude open-market competition.
- ◆ Insurers would be required to provide insurance to clients and exposures it would not have otherwise.
- ◆ The ability to underwrite risk involved would be precluded.
- ◆ Administrative costs at inception could reduce any perceived cost savings.

### 3. No Change (Open Market, Including Fixed and Retrospective Plans)

The carriers and many of the brokers commented that open-market DBA premiums reached their peak between 2002 and 2004 and have been steadily declining since then. They contend that the early years in Iraq and Afghanistan were novel situations and that premiums have declined because carriers now have a better understanding of the nature of the hazards in those regions. Never in history have so many contractor personnel been involved in supporting operations in a war zone. Many of the comments, such as the following, emphasized the importance of maintaining open-market competition:

- ◆ Only competition can maximize efficiencies and cost savings.
- ◆ The key is to maintain competition but use contracting offices to leverage better rates.

### 4. and 5. Government Self-Insurance

One of the two carriers and several brokers noted that this alternative would be less expensive than the status quo (open-market or single-provider programs) in the long run, if the Department used third-party administrators to administer it. Also, this alternative would potentially eliminate both the carriers' and DOL's current requirement to distinguish between WHCA and DBA claims. Hesitation about this alternative related to the elimination of a competitive marketplace, the difficulty if it became necessary to go back to involving brokers and carriers, and the Department's ability to promptly and efficiently settle claims. Other comments included the following:

- ◆ Self-insuring would minimize government overhead costs.
- ◆ Broker compensation would be reduced or eliminated.
- ◆ Actuarial consulting and program administration costs would be reduced.
- ◆ The financing aspect of the insurance market would be removed.
- ◆ The correlation of costs to losses would be much more consistent.
- ◆ Risks of cost volatility and unexpected cost surprises at certain times would be higher than under any other alternative; also, there may be Antideficiency Act implications.
- ◆ Contractors would have no incentive to implement effective risk control measures, because DOD is paying directly.
- ◆ DOD may be required to pay into DOL's Special Fund assessments based in part on DBA-paid claims.<sup>27</sup>
- ◆ Cost savings are assumed, because government would absorb only the costs related to administration and payment of claims.
- ◆ Self-insuring runs counter to Congress's criteria: competitive marketplace, low level of risk for DOD, and correlation of premium paid to claims incurred.

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<sup>27</sup> To cover second injuries for employees who return to work, DOL collects Special Fund assessments from all carriers based on the percentage of losses reported.

- ◆ There is no certainty that costs would be saved; the national trend is to go away from centralized self-insurance workers compensation programs due to costs and administrative burden.
- ◆ DOD should consider taking on the risk for contractors, because DOD is paying for all of the risks anyway.
- ◆ DOD would be obligated to reserve its exposure.

The Department also requested feedback involving use of third-party administration compared to in-house administration for government self-insurance.<sup>28</sup> The following are some of the comments:

- ◆ In-house administration would not benefit DOD, because business involves tremendous infrastructure support.
- ◆ Third-party administration would require long-term commitment.
- ◆ Outsourced service provider (third-party administrator) has three advantages:
  - The Department would not need to hire or train in-house staff
  - The provider could be compensated for a preset fee with no requirement for employee benefit programs or pension plans to be financed by DOD
  - Contracting with a service provider would enable DOD to exert control over cost and performance.
- ◆ Outsourced service provider disadvantage is that with disputed or contentious claim issues, claimant may use fact that DOD outsourced claims handling as means of embarrassing DOD in court of public opinion.
- ◆ Only a few claims organizations would be large enough.
- ◆ Costs of private-sector claim or administrative workers must be considered.
- ◆ If in-house administration were used, concern could arise about claimant treatment.

## 6. GSA-Type Schedule, with a Set of Maximum Rates

In essence, this alternative is a multiple-award type contract with multiple competitions and with a set of maximum rates; each major contract would be separately competed (a vehicle structured similar to some stateside workers compensation policies).<sup>29</sup> Below are respondents' key comments on this alternative:

- ◆ Pooling of like exposures could enable insurers to develop better understanding of similar exposures.

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<sup>28</sup> The term “third-party administration” refers to all claims administration efforts, such as claims processing, provision of medical evacuations and medical care, and investigations.

<sup>29</sup> Stateside workers compensation rates for several states are developed in part by adding to the NCCI-maintained loss ratio factor associated with each labor category and the carrier’s and broker’s expense factors.

- ◆ Potentially broader divergence of risk exposures could minimize exposure to catastrophic events; however, there is no guarantee that all awardees would be insuring the same number or type of “questionable” clients or exposures.
- ◆ Insurers would be required to provide insurance to clients and exposures it would not have otherwise.
- ◆ The ability to underwrite the risk involved would be precluded.
- ◆ This is similar to a multiple award using single competition approach.
- ◆ A level of competitiveness among insurers would continue, because each major contract would be open to bid.
- ◆ This alternative addresses the criterion calling for a low amount of DOD risk.

## **7. Prequalification of DOD-Approved DBA Carriers and Brokers or Agents**

Some respondents did not understand the nature of this intended approach, which was to provide DOD-specified criteria, including potential review of the carriers’ underwriting processes. One of the largest DBA carriers responded that it favored this alternative over all other approaches because it would allow for multiple carriers to continue competing and would enable DOD to impose any parameters it deemed appropriate to control rates and costs.

## **8. Self-Insurance by Contractors**

Although this was considered one of the alternatives for DOD’s acquisition strategy, it is already an option for contractors that are preapproved by DOL. We are not aware of any contractors or pools of contractors that are currently using this option for DBA insurance. The Professional Services Council tried to implement a pooling-approach program in late 2003 in response to the spike in rates and lack of availability of coverage that some contractors were experiencing. However, the program was never successfully implemented because council members indicated that the decoupling of DBA insurance could lead to higher premiums for other lines of insurance. Comments about self-insurance by contractors included the following:

- ◆ Majority of contractors
  - have no interest in taking on the enormous risk of and exposure to catastrophic loss, especially given the long tail of claims;
  - do not want to post the collateral required by DOL;
  - do not have a claims management infrastructure;
  - are not sophisticated or knowledgeable of laws and regulations to comply with assessment and reporting requirements of DOL; and
  - want to know the ultimate cost before they bid on work (not feasible with self-insurance).
- ◆ Contractors would potentially have to employ additional loss control measures.
- ◆ It would still be necessary to distinguish between DBA and WHCA claims.

- ◆ The need for DBA insurers would be eliminated, which would preclude meeting the Section 843 criterion for maintenance of competitive marketplace.
- ◆ Smaller contractors would encounter financial difficulties leading to only the largest contractors being able to bid on DOD work.

## **B. Responses to General DBA Insurance Questions**

In addition to commenting on the eight possible acquisition strategies, industry responders also addressed several general questions posed by the Department. Their responses are summarized below.

### **1. Main Cost Drivers**

The respondents said that the main cost drivers of DOD's DBA expense were administrative expenses (for example, paying vendors), the DBA package itself (which provides more and higher benefits than most stateside workers compensation programs), wage indemnity benefits, and the hazardous work locales. The following are some of the specific comments related to the key cost drivers:

- ◆ Indemnity and medical benefits (more generous in scope than under typical stateside workers compensation plans, including claimant's ability to choose any qualified physician)
- ◆ Younger-than-average pool of claimants with potentially unusual or hazardous occupational exposure and a longer term for lifetime medical or disability benefits
- ◆ Claims management practices (geographically placed claims processors, foreign language capabilities, processes for fast reporting of claims, medical infrastructure, and so on)
- ◆ Operating and commission expenses (overhead, rent, travel, salaries, systems, assessments, broker costs, reinsurance costs, selling expenses, posting of collateral with DOL)
- ◆ Contractors' loss control and safety measures, including safety protocols and hiring practices
- ◆ Nature of activities
  - High-hazard occupations (security, construction, etc.)
  - Hazardous driving conditions (one respondent said one of biggest causes of claims is motor vehicle accidents)
- ◆ Theater of operation
  - High-hazard geographical locations of workers, including poor infrastructure
  - Lack of adequate medical care
  - Evacuation costs from variety of challenging geographical locations
  - Challenging climate and work conditions.



## 2. Cost Driver Control or Mitigation

Respondents suggested several key factors for controlling or mitigating cost drivers:

- ◆ Increased loss control and safety measures, including safety protocols and hiring practices
- ◆ Effective and geographically based claims management
- ◆ Preestablished pricing for medical care and evacuation in pertinent geographic locations
- ◆ Overseas center of excellence for providing medical care for all carriers' claimants
- ◆ Mandated care at key strategic hospitals or clinics and creation of a preferred provider organization network for managing bill reviews with predetermined rates
- ◆ Government-provided medical facilities
- ◆ Collection and management of loss data to identify problem exposures, line costs, and better-performing contractors
- ◆ Government-mandated return-to-work program
- ◆ More flexibility in waivers for foreign nationals
- ◆ Capping of indemnity for U.S. nationals based on stateside workers compensation allowances
- ◆ Deductibles
- ◆ More fixed-price contracts to incentivize contractors to install and monitor loss control measures
- ◆ Competitive DBA marketplace.

All eight insurance industry respondents (two carriers and six brokers) emphatically stated that claims management practices are critical to controlling DBA costs. The most frequently reported means of effectively managing claims were as follows:

- ◆ Prompt investigation and verification of claims
- ◆ Prompt payment to the injured party
- ◆ Ongoing communications with the injured party
- ◆ Geographically based claims management (including legal, investigative, and forensic services) with multiple foreign language and currency capabilities
- ◆ Quick response to medical and other emergencies
- ◆ Quick reporting of claims
- ◆ Caps on and supervision of claims adjuster caseloads
- ◆ Effective return-to-work program
- ◆ Prompt settlement of death benefits for third-country nationals and host-country nationals

- ◆ Provision, to every insured person, of a claims bulletin, including forms required for filing claims, information on how to obtain medical care, and answers to frequently asked questions regarding benefits.

### **3. Main Stakeholders**

The main stakeholders identified by respondents included carriers, brokers, contractors, DOD, DOL, and the covered employees.

### **4. Recommended Technical Exhibits to Enhance Competition**

Regarding their recommendations for technical exhibits that DOD should include in solicitations to enhance competition, respondents most frequently noted the need for loss data. Specifically, they recommended providing loss data from at least the previous 5 years (preferably 10 years) that contain the amounts paid out, locations of claims, descriptions of the claims, causes of the claims, and the labor classification of the employees involved.

### **5. Minimum Policy Amounts**

Respondents made the following comments about minimum policy amounts:

- ◆ Minimums are intended to cover initial underwriting, policy issuance, and basic administrative expenses.
- ◆ No minimum premium should be imposed when the prime contractor provides coverage for subcontractors.
- ◆ Use of minimum policy amounts is based on underwriting factors and criteria such as payroll size, number of employees, geographic location, and past claim performance.
- ◆ High minimums can be avoided by doing the following:
  - Further developing and refining subcontractor programs offered by large primes
  - Implementing a small contractor program
  - Requiring that participating insurers provide a minimum as part of their rate offerings and use the minimum as part of the evaluation criteria.
- ◆ A minimum as low as \$2,500 should be achievable.
- ◆ Having no minimum premiums is one advantage of single-provider programs.
- ◆ The assertion that minimum policy amounts are driving the cost of DBA insurance is questionable.
- ◆ Minimums should be eliminated.
- ◆ Minimums exist because of inefficient delivery vehicles and a need for profit.

## 6. Recommended Changes to Current Open-Market Approach to Be Responsive to Section 843 Criteria

Respondents made several recommendations for modifying the current approach (contractors procuring their own DBA coverage) to be responsive to the five criteria outlined in Section 843:

- ◆ Apply underwriting parameters or guidelines to the process of establishing rates
- ◆ Establish a vetting or approval process for rates above a certain pre-established level
- ◆ Require multiple quotes in certain situations (rates or payroll above certain levels, certain activities, and so on)
- ◆ Establish a centrally managed program by contracting with one or more major brokers to leverage competition
- ◆ Eliminate the single-provider model used by certain agencies
- ◆ Step up enforcement of mandatory coverage requirements
- ◆ Reduce the level of DOL loss-based assessments<sup>30</sup>
- ◆ Adopt measures that result in waivers being routinely and timely sought such that the existence of a waiver is known to offerors when they prepare their proposals, and increase use of blanket waivers<sup>31</sup>
- ◆ Consider seeking legislative narrowing of the scope of DBA insurance coverage to limit it to U.S. nationals and people hired in the United States.<sup>32</sup>

### C. Responses to Questions Directed at Brokers and Carriers

Below are the responses to the key questions directed at brokers and carriers:

- ◆ *Roles.* Respondents stated that brokers' and agents' roles were to assist their clients with securing appropriate coverage at favorable rates. In addition, some brokers said that their roles were also to assist with handling, preparing, and documenting claims.
- ◆ *Ratings approach.* Two carrier respondents reported that their ratings approach is based on individual loss histories and safety practices. Contractors with effective safety practices were less likely to incur large losses, and therefore, safety practices were essential to obtaining reasonable DBA rates.
- ◆ *Data.* The Department requested aggregate loss and development information, including medical expenses, lost wages, reserves, adequate medical care, medical evacuation, infrastructure expenses, administrative costs, and other appropriate services and rates of return on invested insurance premiums. No carrier or broker provided this information.

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<sup>30</sup> Loss-based assessments, also referred to as Special Fund assessments, cover second injuries for employees who return to work. The assessments are based on the percentage of losses reported.

<sup>31</sup> Recommendation received in an industry association letter prior to issuance of DOD's published questions.

<sup>32</sup> Ibid.

- ◆ *Retrospective plans.* The brokers' and carriers' views on the use of retrospective rating plans all varied. One carrier reported already using retrospective plans with success, while other respondents reported that it would be difficult to implement. Several respondents indicated that contractors prefer to know their final costs up front, so they would avoid retrospective plans. However, one respondent said that retrospective plans are particularly effective for larger contractors and provide an incentive for contractors to invest in loss control and safety measures. In contrast, one broker stated that the long-tail nature of DBA claims settlements makes the use of retrospective plans administratively burdensome and detrimental to the prompt closeout of cost-reimbursable type contracts. Another respondent stated that retrospective plans can provide a mechanism for contractors to pay a portion of their own losses to a maximum (which most respondents agreed lowers costs in the long run). Another stated that employing retrospective plans with just the largest DOD contractors could give DOD the bulk of cost savings available from this approach while minimizing administration.
- ◆ *Subcontractors.* With respect to prime contractors providing DBA coverage for their subcontractors, some responded that subcontractors should be responsible for acquiring their own DBA coverage, while one reported that subcontractors should obtain coverage through their prime contractor. This latter respondent asserted that prime contractors arranging for DBA coverage for their subcontractors leads to administrative efficiencies, because all subcontractors would be bundled with the prime and minimum policy amounts would be less likely. Those favoring subcontractors acquiring their own coverage contended that having their own DBA insurance would be an incentive for them to focus on safety practices.
- ◆ *Impact of safety record.* Brokers and carriers all agreed that safety practices affect insurance rates.
- ◆ *Maximum mandated DBA rates.* One major carrier merely commented that this approach would preclude open-market competition. Other respondents made the following key comments about maximum mandated DBA rates:
  - Maximum rates would be actuarially unsound; it would be better to utilize other parameters and protocols such as a ceiling for certain rates and a process for exceptions.
  - Approach appears premature because components (or venues) for filing rates have not been developed in the DBA market.
  - A single year's experience would skew rates.
  - Rate maximums should be set by location, with a credit for contractors with above-average loss control and a penalty for those with below-average loss control.
  - Filing of premium rates should not be considered onerous because it is similar to insurers filing annually with states (for workers compensation insurance).

- ▶ The Department should consider a bifurcated approach in which it would mandate a loss containment factor and insurers would file their own tiered expense factors (same as many stateside workers compensation systems).<sup>33</sup>
- ▶ If market competition is not effective, annual filings may be preferable to a fixed rate for a long-term contract.
- ▶ Due to the lag in claims development, this approach will work only if claims experience is aggregated over multiple years.

#### **D. Responses to Questions Directed at Defense Contractors**

Only two major defense contractors addressed how they acquire their DBA coverage and how it is priced. One of the contractors reported having a retrospective rating approach, and the other reported coverage on a guaranteed-cost (fixed) basis. They acquired their various insurance policies through a multiline insurance program, but all of their policies are separately priced. They report having no visibility into whether any discounts have been factored in; they see only the rates they have been quoted. Both contractors agreed that subcontractors should acquire their own DBA insurance.

A few contractors responded on an unattributed basis via their trade associations but did not respond to most of the questions, and a few others addressed single issues of concern to their particular lines of business.<sup>34</sup>

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<sup>33</sup> Both terms—“loss containment factor” and “tiered expense factors”—deal with filings that have to be made by insurers offering or seeking to offer workers compensation coverage in states that utilize retrospective rating plan approaches.

<sup>34</sup> Due to the limited responses received from the contractor community, the Department does not consider the responses to be representative of contractors’ viewpoints DOD-wide.

## Section 6

### Analysis of Departmental Data

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To gain a factual understanding of the DBA premiums and rates paid, the Department asked contracting organizations for the military services and defense agencies to provide detailed DBA data on contracts (both prime and subcontracts) covered under the open-market model or under the USACE/JCC-IA single-provider program:

- ◆ Information provided on the open-market model covered 229 DOD prime contracts to which the DBA insurance requirement applied. These contracts involved a total of 375 contractors (both prime and subcontractors). Within the group of prime and subcontracts reported, DBA insurance was provided by 32 different insurers. Although complete information was not available for every DBA-covered prime or subcontract, the open-market data provided showed DBA annual premium payments of \$282 million<sup>35</sup> for policy periods that end sometime after October 1, 2008.<sup>36</sup>
- ◆ Information provided on the USACE single-provider program for a comparable time period represented total premiums paid of approximately \$45 million.

The data provided on the open-market model and USACE single-provider program represent DBA premiums for the Department totaling about \$327 million.<sup>37</sup>

#### **A. Analysis of DBA Premiums**

The Department examined the DBA data in two distinct ways: by total premiums and by DBA rate. The premiums were analyzed in a variety of ways to determine, among other things, which DOD component, defense contractor, program, and insurance carrier accounted for most of the DBA premiums and what amount of the premiums was associated with the war effort. The following subsections present the results.

##### **1. DBA Premiums by Insurance Carrier**

Of the 32 different insurers providing DBA insurance to defense contractors (both prime and subcontractors), American International Group, Inc., (AIG) accounted for about three-quarters of the total DBA insurance policy premium dollars, while CNA wrote about 14 percent, and ACE Group, 7 percent, as shown in Figure 1. These three insurance carriers accounted for approximately 97 percent of the DBA premiums paid by the Department for the data collected.

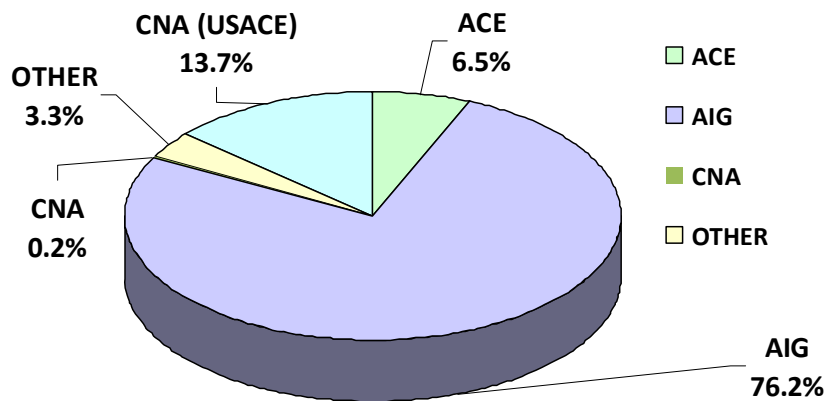
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<sup>35</sup> Actual premium payments for the period covered may vary from those reported because of post-period “true up” of final premiums due. When payroll data are finalized for the policy period for which coverage has been provided by the insurer, the actual premium owed to the insurer may change.

<sup>36</sup> The premiums represent policy periods that cross into FY 2009 and end sometime after October 1 2008.

<sup>37</sup> The Department believes that the data provided by the contracting organizations represent a significant proportion of the total DBA premium base, the premium rates paid within the Department, and a comprehensive cross-section of the current state of the DBA insurance program.

Figure 1. Distribution of DBA Premiums by Carrier

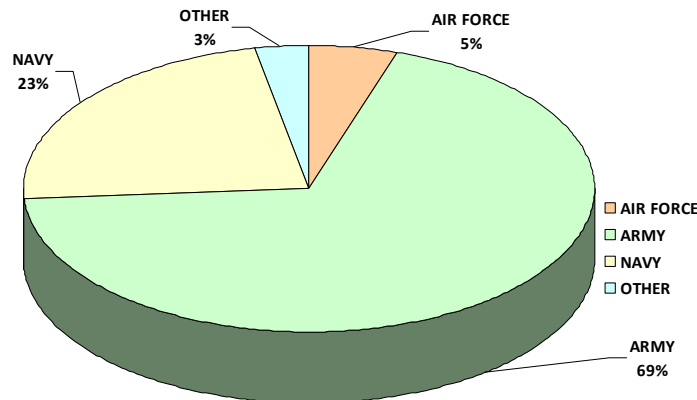


Note: “CNA (USACE)” represents premiums from the USACE single-provider program, whereas “CNA” represents premiums from the open-market program.

## 2. DBA Premiums by DOD Component

For the policy data collected, the Army’s accounted for 69 percent of the DBA insurance premium dollars, the Navy accounted for 23 percent, and the Air Force, 5 percent, as shown on Figure 2. The balance of the DOD components together accounted for the remaining 3 percent.<sup>38</sup>

Figure 2. Distribution of DBA Premiums by Defense Component

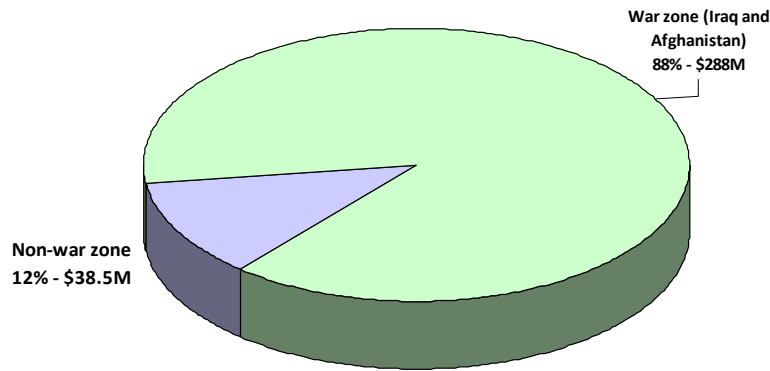


## 3. DBA Premiums by War and Non-War Zones

Eighty-eight percent of the premiums reported were for prime or subcontracts that had a primary place of performance in either Iraq or Afghanistan, as shown in Figure 3. The significant portion illustrates the impact on the DBA program of the defense contractors’ in-country support of the war effort.

<sup>38</sup> The other DOD components include Defense Finance and Accounting Service, Defense Intelligence Agency, Defense Information Systems Agency, Defense Logistics Agency, Missile Defense Agency, National Geospatial-Intelligence Agency, U.S. Special Operations Command, U.S. Transportation Command, and Washington Headquarters Services.

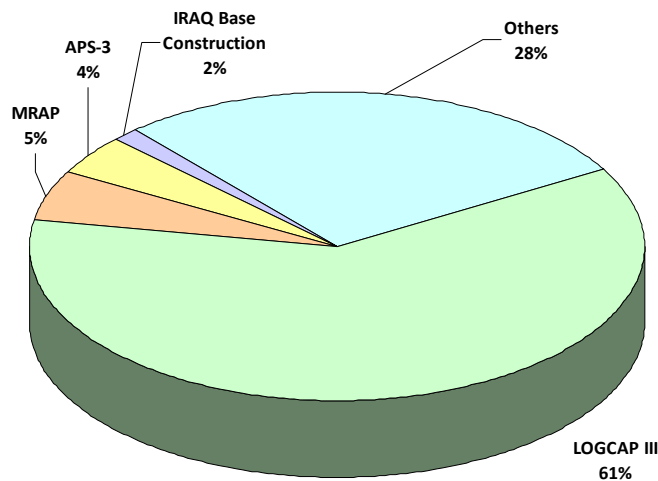
Figure 3. Distribution of DBA Premiums by War and Non-War Zones



#### 4. DBA Premiums by Program

The Army’s Logistics Civil Augmentation Program (LOGCAP) III, which provides for logistical support to U.S. troops, accounted for 61 percent of total DBA premiums. Other significant programs are the Mine Resistant Ambush Protected vehicles (MRAP) and Army-Prepositioned Stock (APS-3) programs, as shown in Figure 4.

Figure 4. Distribution of DBA Premiums by Program



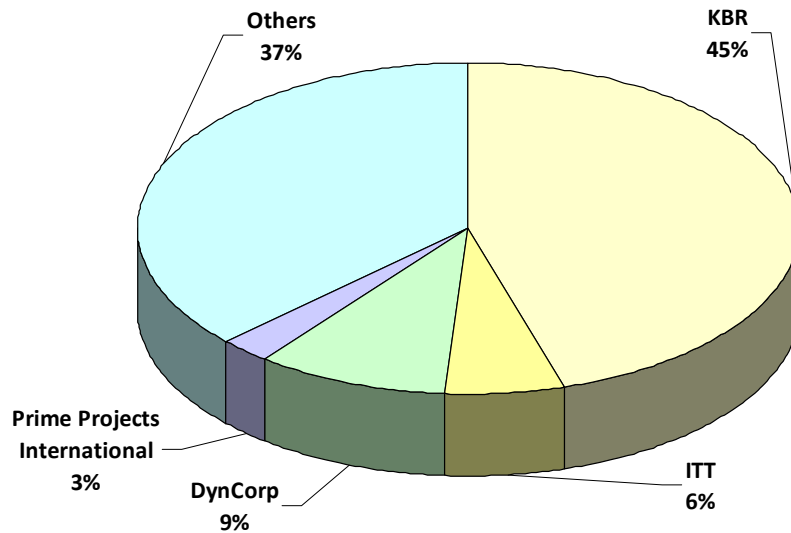
Note: “Others” are programs with less than 2 percent of total premiums.

#### 5. DBA Premiums by Defense Contractor

Largely due to the magnitude of the dollars involved with the LOGCAP III contract, KBR accounted for almost half of the DBA premiums, as shown in Figure 5. DynCorp International was next at about 10 percent, mostly due to its Air Force Contract Augmentation Program and the APS-3 contracts.



Figure 5. Distribution of DBA Premiums by Contractor



Note: "Others" are contractors with less than 2 percent of total premiums.

### **B. Analysis of DBA Rates**

The primary goal of the Department’s analysis was to determine the rates being experienced in the open market and compare them to those in the USACE single-provider program. Within the open market, a policy may contain one or more rate categories based on the type of work being performed or the geographic location of the work. The open-market data are represented by a wide assortment of rate categories and geographic locations. All combined, the reported open-market policies contained 87 separate rates. The USACE single-provider program, on the other hand, provides for only four rate categories (services, construction, security, and aviation) irrespective of location or performing contractor.<sup>39</sup>

The total premium paid on a given policy is a function of the rate categories and the payroll base to which those rates apply. Because the data reported contained total premiums ranging from under \$100 to over \$100,000,000 it was apparent that a simple average of the stated contract policy rates would not accurately reflect the cost to the Department. Therefore, the Department calculated weighted averages for both the open-market and the USACE single-provider programs based on the total premiums generated by rate category. Table 4 shows a simplified example of this weighting.

<sup>39</sup> See Section 2 of this report for a list of the single-provider rates. USACE rate categories make no distinction for geographic location, but USACE-provided data did include information on the geographic location of the work being performed.

Table 4. Example Comparison of Average to Weighted Average Premium

Contract	Total premium	Rate per \$100 of payroll	Weight	Weighted premium (rate x weight)
A	\$50,000	\$5.00	0.004	\$0.02
B	\$12,000,000	\$6.00	0.996	\$5.97
Total	\$12,050,000		1.000	\$5.99
Average		\$5.50		
Weighted avg.				\$5.99

To enable comparisons between open-market and USACE single-provider rates, the Department calculated overall weighted average DBA rates, as well as weighted average rates for war zones (Iraq and Afghanistan) and for non-war zones (all other locations). The following subsections contain the results.

### 1. Overall DBA Rates Paid by the Department

Figure 6 compares the open-market program to the USACE single-provider program and shows the relative weighted rates, as well as the lowest and highest rates, for all locations. The USACE single-provider weighted average premium rate of \$8.32 (per \$100 of payroll) is 57 percent higher than the \$5.30 weighted average rate obtained in the open market.

Figure 6. Comparison of Open-Market and USACE Single-Provider Rates—All Locations

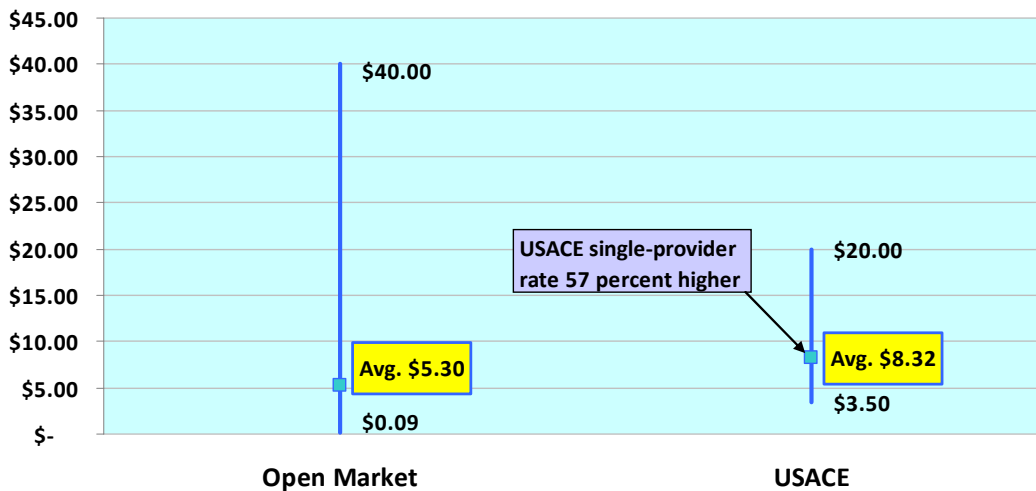
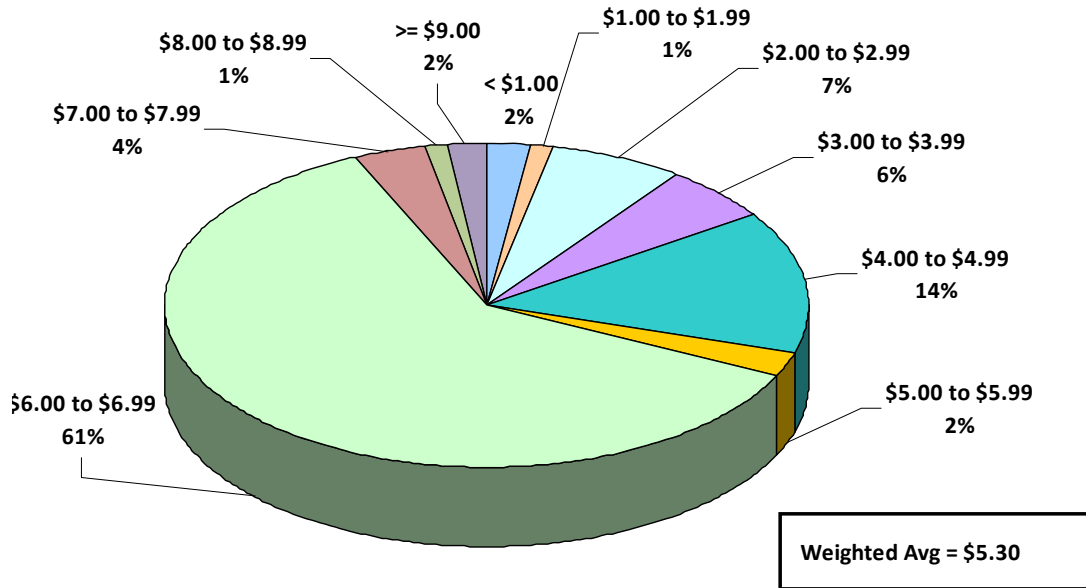


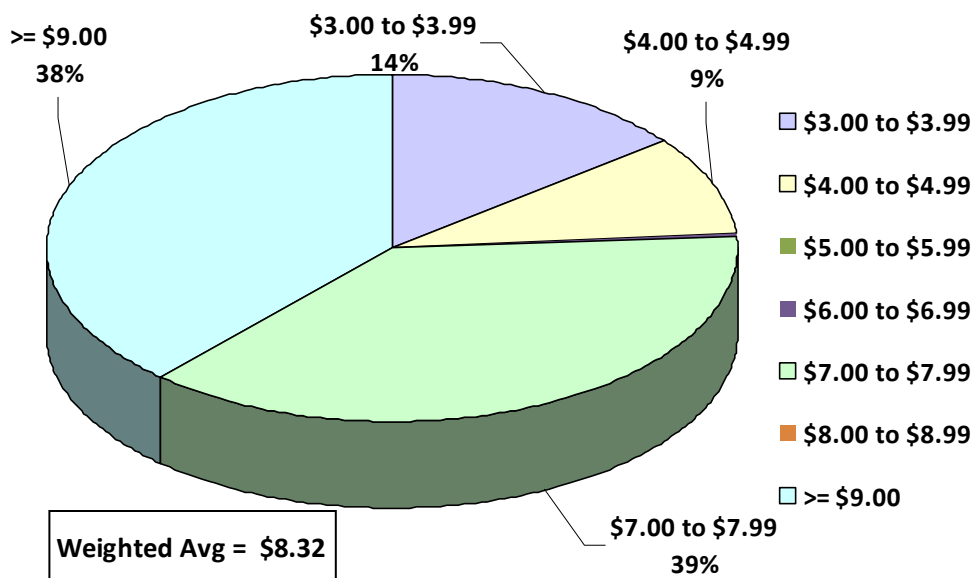
Figure 7 shows the relative percentage of premium rates experienced in the open market in terms of rate ranges. The preponderance of rates in the open market is in the \$6.00 to \$6.99 range.

Figure 7. Distribution of Open-Market DBA Rates—All Locations



In comparison, the predominant weighted rates in the USACE single-provider program for all locations were higher, in the \$7.00 to \$7.99 range and above \$9.00, as shown in Figure 8.

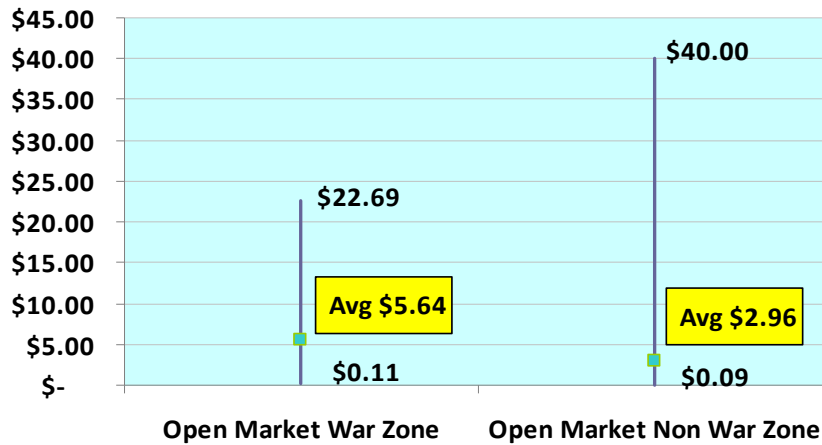
Figure 8. Distribution of USACE Single-Provider DBA Rates—All Locations



## 2. Comparison of Open-Market DBA Rates Paid in War and Non-War Zones

Defense contractors with a primary place of performance in either Iraq or Afghanistan, as noted earlier, accounted for 88 percent of the premiums reported. Hence, the DBA rates paid by those contractors had a significant effect on the overall rate paid by the Department. Figure 9 compares the open-market weighted DBA rate (and minimum and maximum) in war zones to the rate in non-war zones. The open market showed significant differences between these two areas. With a weighted average of \$5.64, the open-market rate for a war zone was more than 90 percent higher than the weighted average rate (\$2.96) for non-war locations.

Figure 9. Comparison of Open-Market DBA Rates—War Zone and Non-War Zone



## 3. Comparison of Open-Market and Single-Provider DBA Rates Paid in War Zone

For defense contracts with the primary place of performance in war zones, the USACE single-provider weighted average rate of \$8.54 was 51 percent higher than the \$5.64 weighted average obtained in the open market, as shown in Figure 10.

Figure 10. Comparison of Open-Market and Single-Provider DBA Rates—War Zone

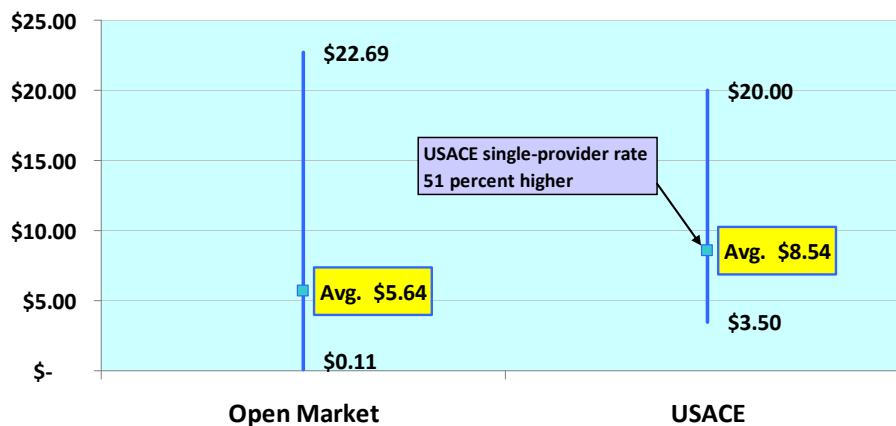
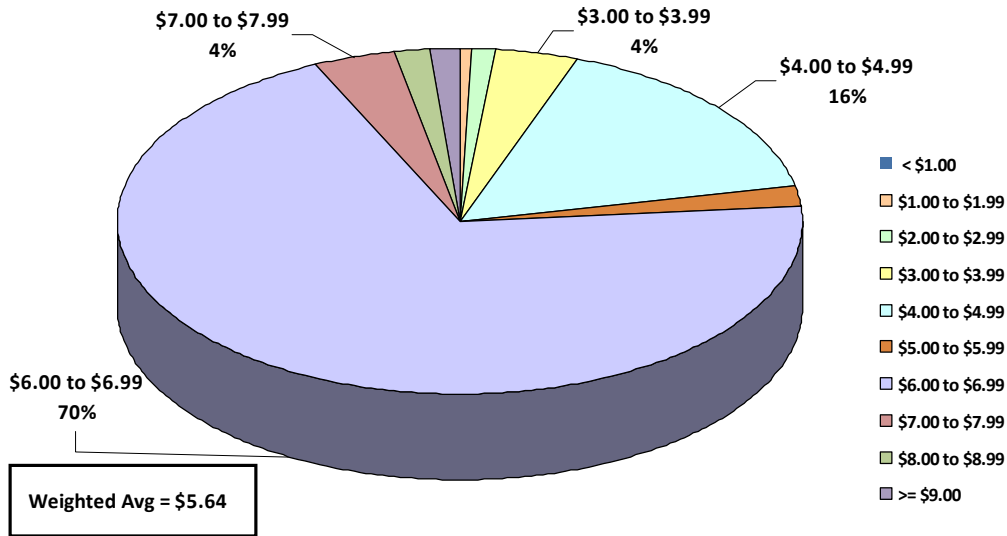


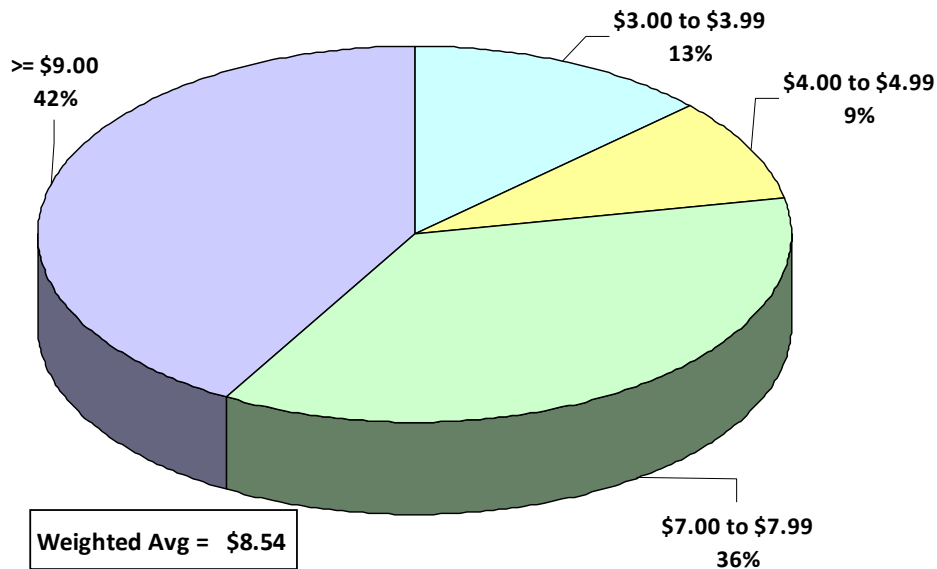
Figure 11 shows the relative percentage of the premium rate ranges for the open market for Iraq and Afghanistan. The preponderance of rates is in the \$6.00 to \$6.99 range.

Figure 11. Distribution of Open-Market DBA Rates—War Zone



In contrast, Figure 12 shows the premium rate distribution for the USACE single-provider program for Iraq and Afghanistan. Most of these rates are higher, in the \$7.00 to \$7.99 range and \$9.00 and higher.

Figure 12. Distribution of USACE Single-Provider DBA Rates—War Zone



#### 4. Comparison of Open-Market and Single-Provider DBA Rates Paid in Non-War Zone

Figure 13 compares the open-market rate to the USACE single-provider rate for all non-war-zone areas.<sup>40</sup> The USACE single-provider weighted average rate of \$5.89 is 90 percent higher than the \$2.96 weighted average for the open market.

Figure 13. Comparison of Open-Market and Single-Provider DBA Rates—Non-War Zone

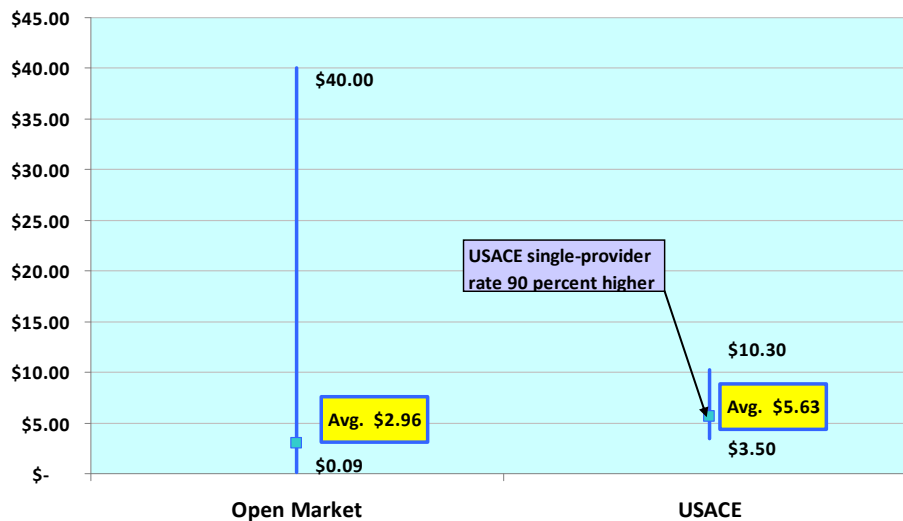
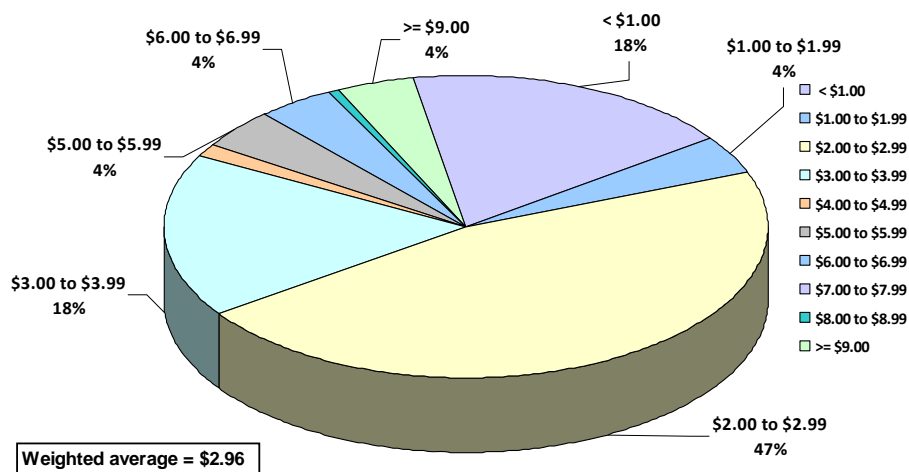


Figure 14 shows the relative percentage of premium rate ranges for the open market for locations other than Iraq and Afghanistan. The preponderance of rates is in the \$2.00 to \$2.99 range.

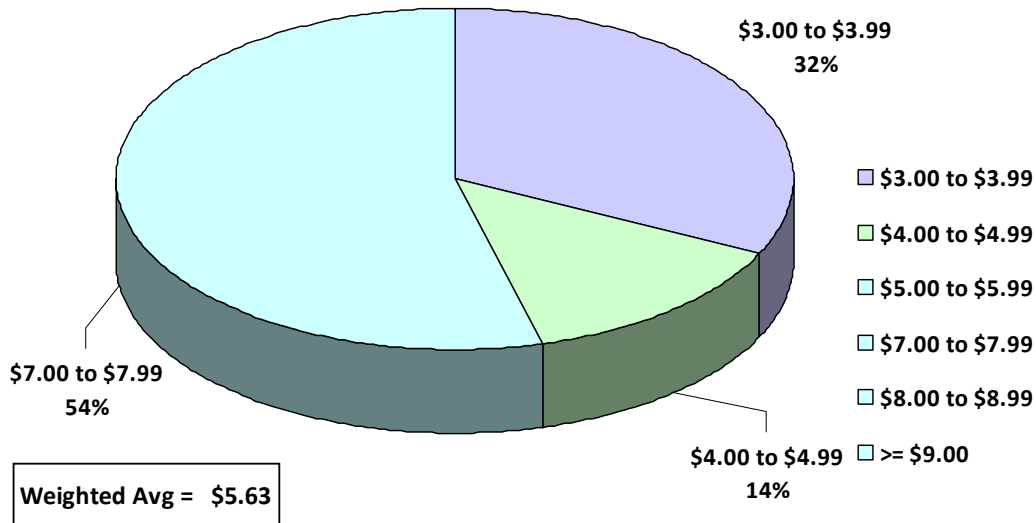
Figure 14. Distribution of Open-Market DBA Rates—Non-War Zone



<sup>40</sup> Locations other than Iraq and Afghanistan are considered non-war zones for the Department’s analysis.

In contrast, Figure 15 shows the premium rate range distribution for the USACE single-provider program for non-war zones. The preponderance of rates is in the \$3.00 to \$3.99 range and the \$7.00 to \$7.99 range.

Figure 15. Distribution of USACE Single-Provider DBA Rates—Non-War Zone



### C. Conclusions

When comparing the open-market and single-provider DBA insurance approaches, the Department found that premium rates in the open market vary significantly and over a greater range than do the four predetermined rates available under the USACE single-provider program. Factors such as the type of work being performed, the location of performance, the extent of concentration of performing personnel, and the individual contractors’ risk management practices and safety records all enter into the setting of premiums under the open-market model. In comparison, case-by-case distinctions are not possible with the premium rates available under the single-provider approach. Also, in the single-provider model, the insurer must offer coverage at the predetermined premium rates to all who seek such coverage, irrespective of their location of performance, risk management practices, or safety records.

The data showed that the war effort contributed significantly to the increased amount of premiums the Department has paid, accounting for 88 percent of the premiums in the contractors’ most recent policy periods. Likewise, the analysis demonstrated that the open-market DBA rates for contractors performing primarily in war-zone areas are 90 percent higher than rates in non-war locations. Accordingly, it is not surprising that the Army’s LOGCAP III contract, which supports the current war effort, contributed to nearly two-thirds (61 percent) of the premium data the Department collected and that the primary DBA insurance carrier for that contract contributed to over three-quarters of these premiums.

The data also indicated that the typical DBA rate paid by the Department under its single-provider program is substantially *higher* than that available through the open market. Specifically, the USACE weighted average rates ranged from 51 percent higher in the war zone (Iraq and Afghanistan) to 90 percent higher in all other locations.<sup>41</sup>

*The Department's overall conclusion, based on its comprehensive analysis of the current DBA premium data, is that the open market—when it involves adequate price competition among carriers—results in rates that are lower than those in a single-provider program.*

The following example illustrates the open-market savings compared to the single-provider approach. Prior to being covered under the USACE program, a JCC-IA contractor's previous broker and carrier had offered a rate of \$5.30 per \$100 of payroll. In contrast, the USACE single-provider contract rate is \$12.50 per \$100 of payroll—more than double the rate the contractor obtained in the open market. Due to the large payroll volume of the subject security contract, the *increased* cost of bringing the contract under the USACE single-provider program exceeds \$6 million per year.

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<sup>41</sup> Comparing the open-market and single-provider models by referring only to the lowest predetermined premium rate available under the USACE single-provider program can lead to very misleading conclusions with respect to the relative cost effectiveness of the two approaches to acquiring DBA insurance coverage.



## Section 7

### Evaluation and Analysis of Alternatives

Conceptually, the eight acquisition alternatives listed in Section 4 (and in the request for industry input) can be grouped into a smaller set of generic alternatives for evaluating how well they satisfy the criteria listed in Section 843. (Some of the alternatives were, at their core, merely variants of basic structures that have many similar characteristics.) The Department decided on four different categories of alternatives (A through D). Table 5 identifies them; it also maps them to the options described in the request for industry input.

*Table 5. Acquisition Alternatives Considered*

Alternative	Description	Mapping to options <sup>a</sup>
A—Open Market	Prime and subcontractors acquire DBA insurance from any of the providers approved by DOL or DOD (or self-insure if approved by DOL) at rates negotiated individually with each selected provider. Potential providers decide individually whether they wish to go through the DOL or DOD approval process. Neither DOL nor DOD does any selection of potential providers or negotiation of premium rates for DBA coverage. This is similar to the current approach for all contractors outside of the USAID, DOS, or USACE single-provider programs.	3, 7
B—Single Provider	Prime and subcontractors acquire DBA insurance from a single, competitively selected provider determined by DOD and at predetermined rates. This is similar to the current USAID, DOS, and USACE programs.	1
C—Multiple Providers	Prime and subcontractors acquire DBA insurance from among a set of competitively selected providers determined by DOD and at predetermined rates. Providers may offer coverage for all geographic locations and all labor classes or for only certain geographic locations or labor classes. In one variant of this alternative, more than one provider is available for each such subset (location or labor class). Rates are predetermined, but may vary among available providers and among geographic locations and labor classes.	2, 6
D—Government Self-Insurance	The government—via either a special trust fund or a captive entity set up specifically to administer the DBA program and make claims payments—pays directly for the DBA coverage of prime and subcontractors engaged in work to which DBA applies.	4, 5

<sup>a</sup> These options were described in the request for industry input published in the Federal Register/FedBizOps. The Department eliminated Option 8 from further consideration because it does not believe that it would be administratively feasible or legally possible to mandate self-insurance arrangements by individual contractors or groups of contractors. In addition, because contractor voluntary self-insurance is currently allowed (if preapproved by DOL), contractor (voluntary) self-insurance is conceptually already included in Alternative A.

The four basic alternatives identified above represent significantly different approaches to providing DBA insurance coverage, ranging from full and ongoing use of the current approach (open market, including fixed-rate and retrospective plans) to competitive selection of one or more insurance providers, to some form of government self-insurance.

## **A. Qualitative Assessments**

The following subsections summarize the Department’s view of the pros and cons of each of the four alternative acquisition strategies based on its data analysis, market research, and discussions with government and industry representatives.

### **1. Alternative A—Open Market with Improvements**

This alternative contemplates contractors acquiring DBA insurance from an array of DOL-approved or DOD-approved insurance providers. Each contractor would negotiate premium rates with an approved provider, and those rates would reflect consideration of the contractor’s risk management practices and safety record, the work to be performed, and so on. This alternative includes the possibility of implementing improvements based on input the Department received from industry. The following are some pros and cons of this alternative:

- ◆ Pros
  - Can have a beneficial effect on contractor risk management and safety practices, because of the potential impact on premium rates
  - Can lower insurance costs for contractors with good risk and safety performance
  - Can weed out applicants with unacceptable risk profiles
  - Maintains competitive DBA insurance marketplace
  - Requires little or no cost to implement
  - Enables major carriers and brokers to maintain their network of relationships with service providers in difficult locations (for example, war zones without medical infrastructure)
  - Can use retrospective premium techniques for individual contractors
- ◆ Cons
  - Maintains duplicative insurance carrier infrastructure
  - Can adversely affect small businesses if minimum premium amounts are charged
  - Gives DOD limited or no visibility into insurance carrier expenses and profits, the rate setting process, or extra non-DBA coverage that may be bundled within the DBA rates being quoted
  - Limits DOD’s ability to address poor contractor safety performance (moral hazard) and provides little incentive for contractors to ensure reasonable premium rates on sole-source cost-reimbursable contracts<sup>42</sup>
  - Can affect premiums due to factors external to the line of business (for example, poor financial markets or industry performance cycles can affect premiums).

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<sup>42</sup> Service acquisitions with longer periods of performance, particularly multiple-award contracts, should provide for decision points (on and off ramps) to ensure that the government has a qualified pool of contractors that will provide continuous service throughout the life of the contract.

## 2. Alternative B—Single Provider

This alternative contemplates the competitive selection of a single DBA insurance provider, with premium rates predetermined for specific types of work. The single provider must offer DBA coverage to all contractors who apply. Below are some of this alternative's pros and cons:

- ◆ Pros
  - Guarantees all contractors access to insurance
  - Can result in savings due to the absence of duplicative carrier infrastructures
  - Requires less contract administration by contractors because DBA insurance is available from only one provider
  - Provides rate or cost certainty for contractors and DOD
- ◆ Cons
  - May not receive any bids (all four top DBA insurance carriers oppose having a single DOD provider and have indicated they would not likely bid)
  - Has a single point of failure, putting the program at risk if the sole insurance provider ceases operation or has significant financial problems
  - Eliminates competitive insurance marketplace
  - Because rates are predetermined, prevents insurers from underwriting risk
  - Because of the one-size-fits-all nature of the premiums, requires good (contractor) performers and low risk areas to subsidize poor performers and high risk areas
  - May result in premium rates that are higher than rates good performers can obtain in the open market
  - Prevents the use of retrospective premium techniques for individual contractors
  - Results in little or no effective competition (only one bid was received in the latest USACE, DOS and USAID single-provider programs)
  - Poses too much risk
  - Can have a detrimental effect on claims handling because the winner would have no incentive to enhance service facilities
  - Eliminates incentive for contractors to invest in safety and loss prevention measures, which in turn could exacerbate frequency and severity of losses, ultimately increasing premiums
  - Can result in either windfall profits or huge losses, neither of which is acceptable.

### 3. Alternative C—Multiple Providers

This alternative contemplates the competitive selection of multiple DBA insurance providers. Premium rates would be established in advance, and the providers would be required to offer DBA coverage to all contractors who apply. Key pros and cons for this alternative are as follows:

- ◆ Pros
  - Avoids potential risk of a single point of failure
  - Guarantees all prime and subcontractors access to insurance
  - Provides the potential for some non-price competition among carriers because selection criteria could include such factors as claims handling performance and level of staffing by geographical area
  - Through pooling of like exposures, enables insurers to develop better understanding of similar exposures
- ◆ Cons
  - If all rates are established in advance, whether or not they are uniform among all providers, has many of the same disadvantages as the single-provider alternative (moral hazard, cross-subsidization, little insight into expenses, rate setting, lack of retrospective basis, and so on)
  - Ultimately precludes true open-market competition
  - Raises the potential for adverse selection if providers have to specialize by geographic location or work type
  - Potentially complicates administration for contractors that may have to interact with different providers for specialized geographic locations (or work types)
  - Results in premiums containing elements of infrastructure duplication among approved providers.

### 4. Alternative D—Government Self-Insurance with Third-Party Administration<sup>43</sup>

This alternative contemplates establishing a special-purpose trust fund or captive entity that would pay for the costs of claims arising under the Department's prime and subcontracts for work-related injuries covered by the DBA.<sup>44</sup> The administration of the program and the processing and payment of claims would be accomplished by third-party administrators engaged by the captive entity. The government or the captive entity would pay claims directly to claimants or beneficiaries. The costs of claims paid would be charged back to each agency and

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<sup>43</sup> Further detailed analysis of a DOD-administered (in-house) self-insurance captive model was not continued, because this option is not considered viable; it would require significant infrastructure support involving multitudes of employee locations worldwide.

<sup>44</sup> For a comprehensive list and description of the wide variety of areas for which the government self-insures, see Government Accountability Office, *Catalogue of Federal Insurance Activities*, GAO-02-265R, March 2005.

organization participating in the program based on the expenses associated with DBA claims arising from their prime and subcontractors. Below are some pros and cons of this alternative:

◆ Pros

- Potentially cuts costs, because DBA premiums would no longer exist as a direct cost of covered contracts and thus not become part of the base for indirect cost allocation or fee
- Eliminates that portion of the premiums that represents carrier expenses for things like broker commissions, sales and marketing, and profit (DOD's only costs would be for claims and administration of the program)
- Can simplify integration with administration and costs of the WHCA program
- Completely insulates the DBA program from external effects and influences such as financial markets and the insurance industry cycle
- Enables more consistent correlation of costs to actual losses
- Gives DOD immediate and detailed insight into costs, as well as contractor safety and risk management performance
- Enables use of contractor safety and risk management performance as both a past performance and an award fee evaluation factor
- By outsourcing administration,
  - eliminates the need for DOD to hire and train in-house staff
  - bases compensation of third-party administrators on a preset fee
  - enables DOD to exert control over cost and performance
- Has the potential to have the most financial benefit, if implemented government-wide by DOL

◆ Cons

- Requires legislative, regulatory, policy, and process changes
- Has potential moral hazard and increased costs because prime and subcontractors may no longer perceive that they have a direct stake in the cost impact of their safety and risk management practices
- Has potential for significant political pressure from those most directly affected by such a change (carriers, brokers, etc.)
- Has potential legal issues if contractor employees are dissatisfied with the quality or timeliness of service
- Has a higher risk of cost volatility, as well as possible Antideficiency Act implications
- Runs counter to national trend in stateside workers compensation programs to move away from centralized self-insurance due to costs and administrative burden
- Runs counter to one of Congress's criteria: maintain competitive insurance marketplace
- Cannot be implemented within congressionally mandated time frame.

**B. Evaluation Criteria**

To assess the efficacy of the four alternatives and to compare their relative performance, the Department used the five criteria specified in Section 843:

- ◆ Minimize the overhead costs associated with obtaining DBA insurance, such as direct or indirect costs for contract management and contract administration
- ◆ Minimize the costs for coverage consistent with realistic assumptions regarding the likelihood of incurred claims by contractors
- ◆ Provide for a correlation of premiums paid in relation to claims incurred that is modeled on the best practices in government and industry for similar kinds of insurance
- ◆ Provide for a low level of risk to the Department
- ◆ Provide for a competitive marketplace for DBA-required insurance to the maximum extent practicable.

In addition, the Department added a sixth criterion: consider implementation issues. This criterion is meant to ensure consideration of both the number and extent of changes to existing statutes, regulations, policies, processes, insurance contracts, and prime and subcontracts that may be necessary in order to implement a specific alternative. This additional criterion also includes consideration of the likely time frame necessary to make those changes. This is important and prudent because Section 843 requires this report to include a plan to implement the selected acquisition strategy within 18 months after enactment or, stated differently, within 9 months after the required submission date of this report.

The Department further defined the congressional criteria to focus on the specific attributes to be considered in its analysis of the four alternatives. Table 6 summarizes those attributes.

*Table 6. Department’s Delineation of Attributes of Congressional Criteria*

Congressional criterion	Attributes used in the analysis
Minimize overhead costs associated with obtaining such insurance, such as direct or indirect costs for contract management and contract administration	Overhead costs to contractors to obtain and negotiate DBA coverage Oversight and implementation costs to the military services, other defense agencies, and individual contracting offices High-level oversight and WHCA integration by DOL
Minimize costs for coverage consistent with realistic assumptions regarding the likelihood of incurred claims by contractors	Minimization of premium costs to contractors consistent with differentiation based on individual risk management practices, safety record, work types, locations, etc. Minimization of the total costs to DOD considering contractor burdens and profit or fee applied to basic premium costs
Provide for a correlation of premiums paid in relation to claims incurred that is modeled on the best practices in government and industry for similar kinds of insurance	Likelihood that the insurers’ combined ratio is close to 100 Conformance to practices used in other similar casualty insurance circumstances
Provide for a low level of risk to the Department	Minimized risk and impact of provider or carrier failure Minimized financial and legal risks to the Department

Table 6. Department’s Delineation of Attributes of Congressional Criteria

Congressional criterion	Attributes used in the analysis
Provide for a competitive marketplace for DBA-required insurance to the maximum extent practicable	If possible and feasible, reliance on the competitive forces of an open market for DBA insurance

**C. Criteria Weights**

The six criteria—the five specified by Congress and the one added by the Department—used in evaluating the alternative acquisition strategies will contribute in varying degrees to achieving the overarching goal of this effort: minimize DBA insurance cost for the Department and its contractors. Further, some of the criteria may be somewhat inconsistent with one another. For instance, an alternative may have positive aspects for satisfying one criterion (for example, provide for a competitive marketplace for DBA insurance) but not be as favorable in satisfying another (for example, minimize costs for coverage). Therefore, to assess each alternative in terms of how well it satisfies the evaluation criteria and to enable a fair comparison of the alternatives, the Department determined that it needed to weight the relative importance of the six criteria. Table 7 shows the weights assigned. These weights represent the Department’s view of how significant each criterion is in contributing to the achievement of the overarching goal specified in Section 843 of the FY 2009 NDAA. Applying the weights enabled the Department to identify the preferred alternative.

Table 7. Weights Assigned to Evaluation Criteria

Criterion	Weight
1. Minimize overhead costs associated with obtaining such insurance, such as direct or indirect costs for contract management and contract administration	0.05
2. Minimize costs of coverage consistent with realistic assumptions regarding the likelihood of incurred claims by contractors	0.30
3. Provide for a correlation of premiums paid in relation to claims incurred that is modeled on the best practices in government and industry for similar kinds of insurance	0.25
4. Provide for a low level of risk to the Department	0.10
5. Provide for a competitive marketplace for insurance required by the Defense Base Act to the maximum extent practicable	0.20
6. Consider implementation issues	0.10
Total	1.00

**D. Ranking of the Alternatives by Criterion**

This subsection shows the ranks assigned to capture the Department’s judgment concerning how well each alternative satisfies each criterion. In other words, the numerical values represent an assessment of the relative ranking of each alternative with respect to the criterion being considered.

## 1. Minimize Overhead Costs

As depicted in Table 8, the self-insurance alternative is the one that best satisfies this criterion; under this alternative, contractors will not have to expend resources to negotiate and select an insurer to provide DBA coverage. In contrast, the open-market alternative is likely to have the highest overhead cost associated with selecting a DBA insurer. The single-provider alternative would require very little overhead expense associated with insurer selection or rate negotiation, because only one provider is available and the premium rates will be preestablished. Under the multiple-provider alternative, because of the potential presence of more than one DBA insurer, some small amount of contractor overhead resources may be expended in selecting among the available providers.

*Table 8. Ranking of Alternatives for Criterion 1*

Alternative	Rank
A—Open Market	4
B—Single Provider	2
C—Multiple Providers	3
D—Government Self-Insurance	1

## 2. Minimize Costs of Coverage

Table 9 summarizes the ranking of the alternatives for this criterion.

*Table 9. Ranking of Alternatives for Criterion 2*

Alternative	Rank
A—Open Market	2
B—Single Provider	4
C—Multiple Providers	3
D—Government Self-Insurance	1

The self-insurance alternative appears to best satisfy this criterion; the total cost to the Department would reflect only the costs of claims and the overall administration of the program. In addition, this alternative would have no costs for broker commissions, underwriting, sales and marketing, and insurer infrastructure, nor would it have carrier underwriting gains. However, the costs for claims could increase, because contractors would have less incentive to provide a safe workplace and thus to keep their costs down. Nevertheless, if properly managed, the self-insurance option could result in lower costs if contractors are held accountable (through, for example, selection criteria or award fee criteria that are based on contractors’ safety records).

In contrast, the single-provider alternative would likely result in the highest weighted average premiums (especially if a DOD-wide program were implemented), because the one carrier would have to take into account some unknown level of risk when establishing its preset rates. The



problem with both the single- and multiple-provider alternatives is that they use predetermined rates that do not allow for differentiation among insured contractors based on their individual risk management profiles and safety records. Consequently, the open-market rate would be the second best alternative for minimizing costs of coverage, because it provides an incentive to contractors to decrease rates through policies and practices addressing a safe workplace.

**3. Provide for a Correlation of Premiums Paid to Claims Incurred**

One of the basic principles of self-insurance is to make the insurance cost a direct function of claims incurred. For that reason, the self-insurance alternative would best satisfy this criterion. Similarly, the open-market alternative, which has at least some amount of open competition among insurers, would be expected to result in premium rates that were more closely tied to actual risk profiles and claims experience than either of the alternatives that use predetermined, one-size-fits-all rates. Table 10 summarizes the ranking of the alternatives for this criterion.

*Table 10. Ranking of Alternatives for Criterion 3*

Alternative	Rank
A—Open Market	2
B—Single Provider	4
C—Multiple Providers	3
D—Government Self-Insurance	1

**4. Provide for a Low Level of Risk to the Department**

As depicted in Table 11, the self-insurance alternative would present virtually no risk of failure to the Department, because the claims would be paid from a government-funded trust or captive entity. The single-provider alternative has the highest level of risk due to the potential impact if the single insurer were to fail. The multiple-provider alternative, having fewer potential insurers involved than in the open-market alternative, would similarly present the next highest level of risk to the Department.

*Table 11. Ranking of Alternatives for Criterion 4*

Alternative	Rank
A—Open Market	2
B—Single Provider	4
C—Multiple Providers	3
D—Government Self-Insurance	1

## 5. Provide for a Competitive Marketplace

The self-insurance model would, in effect, bypass and render unnecessary any open market for DBA insurance itself and, therefore, performs the least well against this criterion, as shown in Table 12. However, if the potential use of third-party administrators is considered, the self-insurance approach may still retain features of a competitive marketplace, albeit one dealing with claims administration rather than insurance. The alternatives that retain the highest number of potential market participants would perform the best in terms of this criterion. Thus, the open-market alternative has the highest ranking followed by the multiple-provider alternative. The single-provider alternative, especially given the lack of effective competition achieved in the latest procurements for the USACE, DOS, and USAID programs, does not perform well against this criterion.

Table 12. Ranking of Alternatives for Criterion 5

Alternative	Rank
A—Open Market	1
B—Single Provider	3
C—Multiple Providers	2
D—Government Self-Insurance	4

## 6. Consider Implementation Issues

As Table 13 shows, the open-market alternative best satisfies this criterion; implementing this alternative would require only a few, if any, changes to the current environment. Similarly, because it has already been used (albeit in settings of significantly smaller scope), the single-provider alternative would not require significant changes in the current environment in order to be implemented. The multiple-provider alternative also would probably not require any significant changes to law or regulation, but it would take more time to implement than either the open-market or single-provider alternatives. The self-insurance alternative received the lowest rank, because statutes, regulations, policies, and processes would have to be changed before it could be implemented. Moreover, those changes could not be put in place quickly enough to enable implementation of the self-insurance alternative within the time frame specified in Section 843.

Table 13. Ranking of Alternatives for Criterion 6

Alternative	Rank
A—Open Market	1
B—Single Provider	2
C—Multiple Providers	3
D—Government Self-Insurance	4

**E. Application of Weights to Rankings**

When the criterion weighting factors are applied to the set of relative rankings of alternatives shown in the preceding tables, the result is an overall relative ranking of the four alternative acquisition strategies with due consideration given to each of the specified criteria. This can be viewed as a ranking of the acquisition strategy alternatives. Table 14 presents the results of a weighted assessment of the alternatives against the evaluation criteria. The table clearly shows that two alternatives—Alternative A (open market) and Alternative D (government self-insurance with third-party administration)—would be best for acquiring DBA-required insurance.

Table 14. Weighted Rankings of Alternatives, by Criterion

Alternative	Minimize overhead costs	Minimize costs of coverage	Provide for a correlation of premiums paid to claims incurred	Provide for a low level of risk	Provide for a competitive marketplace	Consider implementation issues	Total weighted rank
A—Open Market	0.2	0.6	0.5	0.2	0.2	0.1	1.8
B—Single Provider	0.1	1.2	1.0	0.4	0.6	0.2	3.5
C—Multiple Providers	0.15	0.9	0.75	0.3	0.4	0.3	2.8
D—Government Self-Insurance	0.05	0.3	0.25	0.1	0.8	0.4	1.9

Note: Weighted rankings are calculated by multiplying the rankings from Tables 8 through 13 by the applicable weights from Table 7.

**F. Quantification of Savings for the Highest-Ranked Alternatives**

As noted above, the open-market and the government self-insurance approaches received the highest (and essentially equal) rankings. The high ranking of the open-market model compared to a single-provider model was confirmed by the analysis performed in Section 6. That analysis demonstrated that the open-market approach resulted in substantial savings, ranging from 51 to 90 percent compared to the single-provider model.

For comparison, the Department wanted to estimate the potential savings possible with a self-insurance model using third-party administrators. Because the insurance carriers did not provide the Department with financial information such as their expenses and underwriting gains, the Department was unable to precisely validate the percentages for the various types of expenses associated with DBA insurance. However, using information from recent congressional reports and market research, the Department was able to develop relative ranges of estimated percentages for the groupings of eliminated and reduced expenses resulting from implementation of a government self-insurance model. For example, if the government self-insured, it would no longer have to pay broker commissions, which are included in the current DBA premiums charged to government contracts.

Similarly, because DBA insurance coverage is normally a direct charge to government contracts, the government would no longer have to pay, on its contracts, a contractor’s fee and indirect burdens applied to DBA coverage. The Department estimated that contractor fees and burden range from 5 to 10 percent. Table 15 lists potential sources of savings (expenses eliminated or reduced) due to systemic and structural changes if the government self-insured. In addition, the table shows the estimated range of savings attributable to the elimination of carriers’ underwriting gains. As the table illustrates, by implementing the government self-insurance alternative, the Department should save at least 17 percent and potentially could save up to 63 percent compared with contractors procuring DBA insurance themselves.

Table 15. Potential Sources of Savings Associated with Self-Insurance Alternative

Description of source	Savings <sup>a</sup>
Systemic/structural changes	
Elimination of contractor indirect burden and fee on premiums charged to contracts	5%–10%
Elimination of broker commissions, reinsurance costs, underwriting expenses, state premium taxes and fees, sales and marketing expense, etc.	10%–15%
Reduction of duplicative claims administration, payment processing, general overhead, and corporate expense allocations	2%–3%
Subtotal	17%–28%
Elimination of underwriting gain	0%–35%
Total potential savings	17%–63%

<sup>a</sup> Savings are measured as a percentage relative to total premiums.

Table 16 presents various premium scenarios and provides ranges of possible savings amounts using the saving percentages shown above. Regardless of the level of conservatism in factors used to estimate the potential savings above, the result is a potential for material cost savings to the Department if it implements a self-insurance model with third-party administration.

Table 16. Ranges of Potential Savings at Selected Total Annual Premium Levels

If total annual premiums are (in thousands)	And underwriting gain is	Then range of total potential savings is (in thousands)
\$100,000	0%	\$17,000–\$28,000
	15%	\$32,000–\$43,000
	25%	\$42,000–\$53,000
	35%	\$52,000–\$63,000
\$200,000	0%	\$34,000–\$56,000
	15%	\$64,000–\$86,000
	25%	\$84,000–\$106,000
	35%	\$104,000–\$126,000

Table 16. Ranges of Potential Savings at Selected Total Annual Premium Levels

If total annual premiums are (in thousands)	And underwriting gain is	Then range of total potential savings is (in thousands)
\$300,000	0%	\$51,000–\$84,000
	15%	\$96,000–\$129,000
	25%	\$126,000–\$159,000
	35%	\$156,000–\$189,000
\$400,000	0%	\$68,000–\$112,000
	15%	\$128,000–\$172,000
	25%	\$168,000–\$212,000
	35%	\$208,000–\$252,000

## Section 8

### Selection of the Preferred Alternatives

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Considering the results of its market research and analysis, the Department believes that two alternative acquisition approaches—open market with certain improvements (Alternate A) and government self-insurance using third-party administrators (Alternate D)—deserve to be pursued in a two-pronged approach. As shown in Section 7, both of these alternatives performed well when evaluated in terms of Section 843’s criteria.

This chapter begins with a discussion of the self-insurance alternative. This alternative could not be implemented within the time frame specified in Section 843, because the Department and DOL need to determine the best way to manage the program using third-party administrators and to estimate the initial DOL start-up and program maintenance costs associated with a self-insurance alternative. In the long run, the self-insurance alternative may have the greatest potential for minimizing DBA insurance costs, and it has several administrative and compliance advantages as well. This chapter then addresses the open-market alternative, identifying certain specific actions needed to improve the environment for competition. An open market is preferable to any of the alternatives that use predetermined premium rates (whether via single or multiple providers).

#### **A. Government Self-Insurance with Third-Party Administration**

In order for the Department or DOL to provide captive self-insurance, legislation is required to provide the authority and initial funding. If that occurs, the Department recommends using third-party administration rather than internal government administration. (Both the qualitative and quantitative rankings and the savings estimates developed for this report are predicated on using this method.) Otherwise, the expense to the Department—for personnel training in claims handling, investigations, immediate medical treatment and evacuation, and setup of information technology systems and an infrastructure around the world—would be cost prohibitive and would likely take years to accomplish. In short, the key to minimizing the costs of government self-insurance is to have third parties perform many of the administrative functions on behalf of the government.

Third-party administration has several advantages:

- ◆ *Extensive third-party administrator infrastructure.* The Department’s initial market research revealed the likely existence of a reasonably extensive and vibrant industrial base of third-party administrators. If this is true (in other words, they have the capacity and willingness to administer the Department’s DBA claims), then the essential capability to process claims could be put into place rather quickly. In contrast, setting up the government organization and infrastructure to perform claims administration and evacuation overseas would be cost prohibitive.
- ◆ *Commercial best practice.* Most self-insurers use third-party administrators, which is considered a commercial best practice, one of the aspects referred to in the congressional charter for this report. Private-sector entities and certain governmental organizations,

including the Marine Corps Non-Appropriated Funding Instrument and the DOE Hanford site, currently use third-party administrators.

- ◆ *Incentivizing of third-party administrators.* The compensation arrangement for third-party administrators could be on a fee-per-case or similar basis that ties costs directly to volume, output, and quality of service (something that would not necessarily be the case with hiring government employees to process claims). These third-party administrators would not be government employees.
- ◆ *Impartiality.* Using qualified third parties to process claims would remove potential complaints about the government making the decisions directly and would provide experienced personnel to process the government’s claims. The government’s appeal and dispute resolution processes would remain in place, which might provide contractors and their employees further assurance about the overall decision process.
- ◆ *Competition.* Third-party administrators could be acquired through a competition in which cost and performance can both be factors in selection and continued use.
- ◆ *Easy resource adjustment.* Over time, as the claims workload ebbs and flows, it is much easier to adjust resources available for claims processing.
- ◆ *Government oversight.* Because the captive would be overseen directly by the government—which could even be represented on the board of directors or board of trustees—the government office responsible for the program still would have direct control and influence as to performance, efficiency, and quality.

The Department and DOL are currently working together to determine the best way to proceed with a government self-insurance approach, particularly implementation and administration of the program, and to estimate the initial DOL start-up and program maintenance costs associated with a self-insurance alternative. The Department believes that to maximize savings government-wide, the best approach may be through legislation authorizing DOL to proceed with a government-wide captive self-insurance program for DBA insurance, using third-party administration. Both agencies will continue to work to further develop this approach, but the agencies need additional time to carefully estimate the resource needs of a well-developed plan.

Alternately, Congress could authorize and provide funding for DOD to proceed with a pilot program. Such a program could be established for a period of 3 to 5 years, to validate the potential savings and determine the actual costs and levels of performance achievable using third-party administrators. However, due to the long-tail nature of DBA claims, the total cost of a claim may take longer than 5 years to finalize. Consequently, the pilot program would have to estimate the costs for claims not finalized in the pilot period.

If Congress authorizes and initially funds government-wide self-insurance, the Department recommends that the annual costs of self-insurance—DOD or DOL program oversight costs, third-party administration expenses, indirect expenses, claims losses (including medical and indemnity), and so on—be charged back to each federal department based on the direct claims losses and third-party administration cost for each contract requiring DBA insurance (similar to a working capital fund). Alternately, if Congress provides for and funds a pilot program for a

DOD-only captive structure, the Department would annually allocate the costs to each defense component, based on the claims and administration costs related to each contract requiring DBA insurance. The rationale for this approach is to make the program managers aware of their contractors' safety records and loss experiences to motivate the use of improved safety protocols and risk management, particularly if used as a tool in past performance evaluations and award fee determinations.

## **B. Open Market with Improvements**

Because the DOD or DOL federal government-wide captive self-insurance alternative requires funding and legislative changes, DOD will be unable to move forward on that strategic approach at this time (including a pilot program). If it is expected to take more than 3 years before a self-insurance strategy is in place, the Department recommends moving forward with some near-term improvements to the open-market system. One of the recommendations discussed below would likely require legislative action while the others could be implemented with either additional rulemaking or policy and process changes.

As shown in Section 6, the weighted open-market DBA rate currently paid by the Department is substantially less than that available under the USACE single-provider program. This does not mean, however, that the open-market approach cannot be improved. Those improvements, based on the Department's market research, are as follows:<sup>4546</sup>

- ◆ Provide carriers with comprehensive data on losses
- ◆ Develop an assigned risk program
- ◆ Require separate pricing for coverage other than DBA insurance
- ◆ Establish a single DOD point of contact for waiver coordination.

These are discussed in the following subsections.

### **1. Provide Carriers with Comprehensive Data on Losses**

Because one carrier currently covers about three-quarters of the DOD DBA market, more competitive rates may be achieved if complete demographic data regarding losses were made available to all industry participants. It was a common theme in the industry responses that

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<sup>45</sup> If a self-insurance captive (whether a DOD pilot program or a DOL program administered government-wide) is provided for in legislation and regulatory and policy changes sooner than 3 years, then the Department recommends not proceeding with the three recommendations related to improving the current open-market system.

<sup>46</sup> To improve the administration and efficacy of the DBA program, the Department's market research indicated that several aspects of the existing DBA statute should be addressed; however, these improvements were outside the scope of the Department's charter in Section 843 of the FY2009 NDAA. These changes would improve DBA administration and overall effectiveness in providing timely and accurate benefits to injured workers and survivors. The improvements include: providing the authority for DOL to issue binding decisions at the informal dispute resolution level (pending formal hearing at the Office of Administrative Law Judges); clarifying the calculation of the average weekly wage; restricting the denial of benefits to bona fide, substantiated disputes (subject perhaps to additional payments for failing to prevail at trial); and clarification of the requirement to pay or controvert a claim within 14 days.



providing comprehensive loss information would be very beneficial to the DBA market. Also, it is a best practice used in the stateside workers compensation program.<sup>47</sup> As discussed in Section 2, NCCI collects and publishes comprehensive loss data for over 600 labor categories for many stateside workers compensation programs. However, such comprehensive data are not collected or published for DBA insurance.

The Department recommends that DOL require all approved DBA insurance carriers to periodically provide comprehensive loss information to DOL (electronically and in a standardized format). This should be a condition for being an approved DBA carrier. DOL would then publish the information (suitably redacted to protect the privacy of individual claimants) for use by all carriers in underwriting risks involved with such coverage. The initial submission of comprehensive loss information should include 7 years of loss data from the inception of the war to the present (2003 to 2009), with quarterly submissions of loss data (for the individual quarters and cumulatively since 2003) for periods after 2009. Carriers should provide the following information:

- ◆ Description and causes of losses (for example, motor vehicle or war-related injury)
- ◆ Amount paid, including reserved values and timing of reimbursement (for such items as medical evacuation and rehabilitation, loss of wages, and salary continuation for spouse and children)
- ◆ Citizenship of employee (U.S. national, third-country national, host-country national)
- ◆ Work being performed, loss locations, and number of people involved.

## **2. Develop an Assigned Risk Program**

Market research indicated that the use of assigned risk pools is a best practice within the casualty insurance industry. The use of such pools ensures that small contractors and those with higher risk profiles can obtain insurance coverage. An assigned risk pool is available to provide insurance coverage to high-risk customers who cannot get insured in the normal marketplace. One of the primary reasons the Department started its single-provider pilot program was to address concerns raised by small contractors that they were unable to obtain coverage or that the available insurance had high minimum premium payments. These issues were of particular concern for contractors dealing with the JCC-IA, which issued many contracts to smaller firms.

Establishing an assigned risk pool where coverage is guaranteed with no minimum (or only nominal) premiums should help alleviate this situation. Accordingly, the Department recommends that DOL be provided the necessary statutory authority to establish such a program and make it a requirement to be an approved DBA carrier. DOL-approved carriers with over a specified threshold of written DBA coverage would be required to participate and to agree to guarantee coverage with reasonable rates and no minimum (or nominal) premiums for those applicants that qualify for inclusion on an assigned risk basis.

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<sup>47</sup> One Section 843 criterion was to consider best practices in government and industry for similar kinds of insurance.

### **3. Require Separate Pricing for Coverage Other than DBA Insurance**

From the market research, it was found that at least one major carrier added (or bundled) other coverage (such as accidental death and dismemberment and kidnap and ransom) in its DBA rate without providing separate pricing (to be more attractive to potential clients). Because such coverage is not without cost, its inclusion without separate pricing can result in DBA insurance rates that may be higher than necessary to provide the DBA-mandated coverage levels. Consequently, the Department recommends that DOL-approved DBA carriers be required to include a bare-bones coverage option in their menu.

### **4. Establish a Single DOD Point of Contact for Waiver Coordination**

Currently, as discussed in Section 2, DOD generally obtains DOL country waivers on a program-by-program basis, often without further coordination within the Department. Thus, some DOD components may not be aware of waivers that are available, especially because DOD does not have a central repository or list of such waivers. To ensure more consistent pursuit of waivers for countries with workers compensation systems deemed to be acceptable by DOL, the Department needs to designate one DOD component to be responsible for coordinating waiver requests with DOL and for communicating the applicability of such waivers for foreign nationals to the DOD contracting activities.

## Section 9 Implementation Considerations

Going forward, the preferred alternative acquisition strategy for DBA insurance, as discussed in Section 8, is a two-pronged effort. One prong is to pursue the possibility of government self-insurance. The other is to make selected improvements to the current open-market provision of DBA insurance by insurance carriers. This section briefly describes the implementation actions necessary to achieve these two strategies. It also identifies the stakeholder organizations primarily responsible for making or supporting the specific action items.

### **A. Government Self-Insurance**

One of the most promising alternatives for handling DBA claims would be for the government to set up a captive entity that would use private-sector third-party administrators to effectuate government self-insurance for DBA. Currently, neither DOD nor DOL has the requisite statutory authority or resources to undertake such a program, even as a pilot project. Table 17 identifies specific actions required before a government self-insurance alternative can be pursued.

*Table 17. Implementation Plan for Government Self-Insurance*

Action	Responsibility
<p>1. <i>Finalize the approach to managing the program using third-party administrators, and estimate the initial start-up and program maintenance costs.</i> Specifically, DOL and DOD must do the following:</p> <ul style="list-style-type: none"> <li>◆ Finalize the approach to managing the program using third-party administrators</li> <li>◆ Estimate the potential costs of third-party administration</li> <li>◆ Develop a legislative proposal for both authority and appropriations needed to start a government self-insurance program for DBA.</li> </ul>	DOL and DOD (ongoing)
<p>2. <i>Amend DBA.</i> The Defense Base Act would need to be revised to permit the required coverage to be provided by a government captive self-insurance entity.</p>	Congress
<p>3. <i>Provide statutory authority and appropriations.</i> Legislation would be needed to provide either permanent or temporary statutory authority for either DOD or DOL to establish a self-insurance captive entity and to authorize and appropriate an initial fund with which to operate that entity and make associated DBA claims payments.</p>	Congress
<p>4. <i>Identify program office and contracting activity.</i> Depending on whether or not Congress amends the DBA and depending on which organization is given the requisite statutory authority and funding (DOL or DOD), a program office, including a contracting activity to acquire third-party administration, would need to be identified. The program office would do the following:</p> <ul style="list-style-type: none"> <li>◆ Work with the Congress on the required statutory authorities and funding</li> <li>◆ Identify required changes to regulations, policies, and processes</li> <li>◆ Undertake additional market research and estimation of the potential costs of third-party administration</li> <li>◆ Develop a detailed acquisition plan and timetable, including the necessary solicitations, source evaluation methods, and source selection</li> <li>◆ Oversee implementation and perform ongoing effectiveness assessments.</li> </ul>	DOL or DOD

This particular alternative could not be implemented within the time period specified in Section 843 (within 9 months from the due date of this report or within 18 months after the enactment of Section 843 of the FY 2009 NDAA) due to the potentially extensive legislative, regulatory, policy, and process changes required.

**B. Open Market with Improvements**

If statutory authority for government self-insurance (whether for a DOD or government-wide pilot test) is not provided or will not be forthcoming for an extended time period (for example, more than 3 years), then the Department’s analysis indicates that the open-market acquisition approach provides the best value. That value, however, could be enhanced by taking the actions identified in Table 18.

Table 18. Implementation Plan for Open-Market Improvements

Action	Responsibility
<p>1. <i>Provide for an assigned risk pool arrangement.</i> Implementing this improvement would require the following actions:</p> <ul style="list-style-type: none"> <li>◆ Amend DBA to give DOL the authority to establish an assigned risk pool program.</li> <li>◆ Develop a method and implementing regulations to make DBA coverage assignments under the assigned risk pool arrangement. This would include criteria for qualifying contractors to utilize this coverage, determining whether any specific premium rate limitations will be imposed, determining whether there will be minimum premium amounts and what those amounts may be, and designating the entity that will administer the program.</li> <li>◆ Obtain information documenting the total DBA premiums written by all approved DBA insurers for the most recent calendar year and use that information to establish the market shares held by those insurers and to determine each carrier’s relative participation in the assigned risk pool arrangement.</li> <li>◆ Publicize the existence of the assigned risk pool program to all contracting organizations and prime contractors.</li> </ul>	<p>Congress DOL  DOL and DBA insurers  DOL, DOD and DBA insurers</p>
<p>2. <i>Provide for a claims experience database.</i> Implementing this improvement would require the following actions:</p> <ul style="list-style-type: none"> <li>◆ Develop implementing regulations and standards for the provision of DBA claims data to the designated database administrator.</li> <li>◆ Identify data requirements and obtain data. This will require identifying the specific data elements that will have to be provided in electronic format to a DOL-designated organization. The data elements should be based on the DBA claims made during the past 7 calendar years by every DOL-approved insurer that has written some minimum amount of DBA insurance. Thereafter, each DOL-approved insurer will need to provide updated DBA claims information semiannually in the format and at the frequency specified by the implementing DOL regulations and standards.</li> <li>◆ Develop a database and suitable repository for the claims information identified above that will be accessible by appropriately authorized representatives of insurers that are currently approved by DOL to provide DBA insurance.</li> </ul>	<p>DOL  DOL and DBA insurers  DOL</p>
<p>3. <i>Require separate pricing for coverage other than DBA insurance</i> Implementing this improvement would require DOL to amend its policies for approving DBA carriers and requires the DBA carriers to separately price coverage other than DBA insurance.</p>	<p>DOL and DBA insurers</p>

Table 18. Implementation Plan for Open-Market Improvements

Action	Responsibility
4. <i>Establish a single DOD contact for DBA waivers.</i> Implementing this improvement would require the Department to establish one DOD Component to be responsible for coordinating waivers requests with DOL.	DOD

The first of the open-market improvement actions outlined above (the implementation of an assigned risk pool) will require new or amended statutory authority. As a result, a projected time-frame for the implementation of that improvement cannot be made. For the second improvement action, establishment of a claims experience database, DOL would first have to promulgate new regulations addressing the submission of the required data by approved DBA carriers. Also, the actual implementation of the claims database will likely require contracted support for DOL. The third improvement action, requiring the separate identification of the costs of non-DBA coverage for approved carriers, would likely require at least a DOL regulatory process change. The Department plans to address the fourth improvement action—establishment of a single DOD contact for DBA waivers—within 60 days of submitting this report to Congress and will notify the appropriate office within DOL about the designated DOD contact.

## **Appendix A**

### **Section 843 of the FY 2009 National Defense Authorization Act**

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#### **SEC. 843. REQUIREMENT FOR DEPARTMENT OF DEFENSE TO ADOPT AN ACQUISITION STRATEGY FOR DEFENSE BASE ACT INSURANCE.**

(a) **IN GENERAL.**—The Secretary of Defense shall adopt an acquisition strategy for insurance required by the Defense Base Act (42 U.S.C. 1651 et seq.) which minimizes the cost of such insurance to the Department of Defense and to defense contractors subject to such Act.

(b) **CRITERIA.**—The Secretary shall ensure that the acquisition strategy adopted pursuant to subsection (a) addresses the following criteria:

(1) Minimize overhead costs associated with obtaining such insurance, such as direct or indirect costs for contract management and contract administration.

(2) Minimize costs for coverage of such insurance consistent with realistic assumptions regarding the likelihood of incurred claims by contractors of the Department.

(3) Provide for a correlation of premiums paid in relation to claims incurred that is modeled on best practices in government and industry for similar kinds of insurance.

(4) Provide for a low level of risk to the Department.

(5) Provide for a competitive marketplace for insurance required by the Defense Base Act to the maximum extent practicable.

(c) **OPTIONS.**—In adopting the acquisition strategy pursuant to subsection (a), the Secretary shall consider such options (including entering into a single Defense Base Act insurance contract) as the Secretary deems to best satisfy the criteria identified under subsection (b).

(d) **REPORT.**—(1) Not later than 270 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Armed Services of the Senate and the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Government Reform of the House of Representatives a report on the acquisition strategy adopted pursuant to subsection (a). (2) The report shall include a discussion of each of the options considered pursuant to subsection (c) and the extent to which each option addresses the criteria identified under subsection (b), and shall include a plan to implement within 18 months after the date of enactment of this Act the acquisition strategy adopted by the Secretary.

(e) **REVIEW OF ACQUISITION STRATEGY.**—As considered appropriate by the Secretary, but not less often than once every 3 years, the Secretary shall review and, as necessary, update the acquisition strategy adopted pursuant to subsection (a) to ensure that it best addresses the criteria identified under subsection (b).

## **Appendix B**

### **Defense Base Act (DBA) Insurance Acquisition Strategy for DOD: Questions for Industry and Any Other Interested Parties**

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Please provide responses to the questions below via email to Ms. Teresa Lawson, Senior Procurement Analyst, Defense Procurement and Acquisition Policy, Cost Pricing and Finance Directorate, at [Teresa.Lawson@osd.mil](mailto:Teresa.Lawson@osd.mil) no later than March 18, 2009. Responses must be limited to no more than 20 pages. We prefer responses by email, since the mail process is slow. However, if you would rather provide information by mail, it should be addressed to OUSD(AT&L) DPAP/CPF (Attention: Teresa Lawson) 3062 Defense Pentagon, Washington, DC 20301-3062. Please notify Ms. Lawson by email if you are sending your response to the Pentagon address, or if you would like to make arrangements to hand deliver your response. Ms. Lawson can be reached at (703) 602-2402.

#### **Background**

The Department of Defense (DoD) is soliciting information and feedback from defense contractors, insurance industry representatives and others, on DoD's requirement to develop a comprehensive acquisition strategy for Defense Base Act insurance that will address the following provisions of Section 843 of the 2009 National Defense Authorization Act: *“The Secretary of Defense shall adopt an acquisition strategy for insurance required by the Defense Base Act (42 U.S.C. 1651 et seq.) which minimizes the cost of such insurance to the Department of Defense and to defense contractors subject to such Act... The Secretary shall ensure that the acquisition strategy adopted ... addresses the following criteria: (1) Minimize overhead costs associated with obtaining such insurance, such as direct or indirect costs for contract management and contract administration. (2) Minimize costs for coverage of such insurance consistent with realistic assumptions regarding the likelihood of incurred claims by contractors of the Department. (3) Provide for a correlation of premiums paid in relation to claims incurred that is modeled on best practices in government and industry for similar kinds of insurance. (4) Provide for a low level of risk to the Department. (5) Provide for a competitive marketplace for insurance required by the Defense Base Act to the maximum extent practicable. ...In adopting the acquisition strategy ... the Secretary shall consider such options (including entering into a single Defense Base Act insurance contract) as the Secretary deems to best satisfy the (five aforementioned) criteria ...”*

#### **1. Policy Options**

Under current law and DoD regulations, generally contractors performing work outside the United States are required to have Defense Base Act (DBA) insurance to provide workers' compensation benefits for employees, unless the requirement has been waived by the Department of Labor (DoL). To meet the statutory requirement of the 2009 Act, DoD is considering all options for its acquisition strategy and welcomes comments highlighting the advantages and disadvantages of any of a non-exclusive set of options, which includes but is not limited to: (1) a single-source contract or basic ordering agreement (BOA) awarded on a competitive basis issued and administered by the DoD; (2) a multiple-award contract or BOA

awarded on a competitive basis issued and administered by DoD; (3) no change (i.e., contractors are required to obtain appropriate DBA insurance on their own); (4) government self-insuring for DBA losses while contracting to the private sector for program administrative and claims processing; (5) government self-insuring with DoD and Department of Labor (DoL) employees performing all administrative and claims processing; (6) a GSA schedules-type set of maximum rates, which may include awards based on geographic location of the work to be performed and/or based on the nature of the work to be performed, with competition for each major contract (a vehicle structured similar to state-side workers compensation policies); (7) a prequalified list of DoD-approved DBA carriers and brokers/agents who meet a predetermined set criteria/qualifications to provide DBA insurance from which contractors would be required to obtain appropriate DBA coverage; (8) contractors self-insuring either on an individual basis or by pooling of contractors, including information on how a panel/pool participant would avoid adverse selection; or (9) other alternative recommendations not listed above.

Some questions pertinent to consideration of the various acquisition options are included below, and DoD would appreciate your responses:

- Cost Drivers: What are the main cost drivers of DoD’s DBA expense? How can those cost drivers be better controlled or mitigated?
- Main Stakeholders: Identify the main stakeholders in DBA. How should DoD (and DoL or others if applicable) orchestrate communications and involvement to ensure all stakeholder interests are represented?
- Claims Management: How critical are claims management practices to controlling ultimate DBA costs? Drawing on the best practices of claims management (whether currently applied to DBA claims or not), what should be required to address claims promptly, fairly and efficiently to ensure good service, care and proper treatment for workers serving those who serve our country?
- Technical Exhibits: What claims history or other information should DoD include in its technical exhibits to any solicitation to enhance competition?

## 2. Additional Questions Regarding Potential Policy Options

The Department would appreciate additional specific responses to the following questions citing pros and cons of the various alternatives:

a. Single Source DBA Contract or Basic Ordering Agreement (BOA): Regarding a potential single source contract or BOA (which would be awarded based on source selection procedures considering price, technical, management and past performance criteria) structured as a basic ordering agreement, would your insurance company be willing to bid on such a contract? Why or why not? For broker respondents, do you believe one or more insurance companies/brokers would be interested in bidding on a single source contract? Why or why not? Please provide insight into whether one provider could handle all claims associated with DoD’s DBA insurance requirements for contractor performance overseas for US citizens, foreign nationals, and third country nationals. Finally, please provide insight into the market implications of having only one source for DBA insurance for all of DoD.



b. Multiple Award DBA Contract or BOA: Please provide your recommendations and rationale regarding the basis for dividing the multiple awards—by geographic location, by type of work performed (e.g., basic logistics support, technical services, security, construction, etc.), by military service (Army, Navy, Air Force, etc.) and/or DoD Component (Defense Threat Reduction Agency, Missile Defense Agency, Defense Logistics Agency, etc.), by war zone versus non war-zone, by dollar value of payroll involved and/or dollar amount of contract, etc., to ensure we meet the criteria outlined in the NDAA (minimizing direct and indirect overhead costs associated with administering program, minimizing insurance costs, etc.). Please consider the implications of pooling of like risks (or unlike risks) to minimize insurance costs to DoD.

c. Minimum Policy Amounts: Please provide your recommendations and rationale considering the options regarding minimum policy amounts of a single-provider or a multiple award contract? If a multiple award contract were divided in part based on dollar value of payrolls/dollar value of contracts, what is the maximum threshold you would recommend be used as the basis for not having a minimum policy amount? Should DoD avoid dividing any multiple award contract based on dollar value to minimize the need for minimum policy amounts? Please keep in mind that DoD aims to not discourage small businesses from performing overseas work for the Department and any minimum policy amounts might inhibit that competition.

d. No Change (Contractors procure own DBA coverage): If the current approach is retained, how can it be modified to be responsive to the five criteria outlined in the 2009 National Defense Authorization Act, Section 843?

e. Self-Insurance: If DoD elected to directly self-insure contractor DBA losses, what would be the relative pros and cons of contracted administration vs. “in-house” government administration? Please provide comments regarding the pros and cons of contractors self-insuring either on an individual basis or by pooling of contractors? Recognizing that there are many variations of self-insurance, which do you believe are relevant for DoD to consider and why?

### 3. Specific Questions for Brokers/Carriers

In addition to the questions above soliciting information from all interested parties, the Department would appreciate additional responses from interested brokers and carriers to the following questions:

- a. Experience: What is your experience in handling DBA insurance? For example, how many clients, years and geography of experience, payroll exposure and premium volume managed?
- b. Competition: How do you suggest that Government ensure the broadest industry participation in establishing a DBA insurance acquisition strategy given a limited pool of qualified carriers and broker/agents?
- c. Broker/Agent Role: What is the role of the insurance broker/agent in the open-market DBA insurance procurement process?

- d. Rating Approach: What is your rating approach in light of the underwriting and service complications of insuring this long-tail catastrophic liability? In the absence of adequate loss history data to rate DBA coverage, what is the rationale/rating methodology you apply? How do you measure a contractor's risk mitigation/loss reduction results to reward the best performing contractors and minimize costs to government?
- e. Data: Are you willing and able to provide aggregate loss and development information to include medical expenses, lost wages, reserves, adequate medical care/evacuation/infrastructure expenses, administrative costs, and other appropriate support services? Are you willing to provide the rate of return and amounts made on invested insurance premiums?
- f. Retrospective Plans: Regarding establishing a program with rates that change based on overall program loss experience, what is your experience in structuring loss-sensitive rated DBA programs? Please provide suggestions regarding the potential structures of such retrospective rating plans.
- g. Term Length: Regarding the length of any contract term for any of the policy options being considered, what term length of a contract would be reasonable (1, 3, or 5 years)? If more than a one-year term, could retrospective pricing be a reasonable approach based on the profit/loss ratio?
- h. Subcontractors: Do you recommend that subcontractors obtain their own individual policies, or do you recommend that the prime contractor purchase the insurance for all its subcontractors (at all tiers)?
- i. DBA Data: Please provide recommendations on how DoD can best collect, analyze and act on relevant DBA data from various sources to optimize its understanding and tracking of DBA costs and trends and put DoD in the most favorable negotiating position?
- j. Medical Care: Please provide data and analysis on the costs of finding sources of adequate medical care for countries where the standard of care is insufficient.
- k. Contracting Entity: If DoD procures DBA coverage (vs. contractors procuring), should DoD be contracting with a broker(s) or a carrier(s) or some combination of the two?
- l. Discounts: By including DBA insurance with other insurance coverage, what type of discount is typically obtained on DBA insurance?
- m. Impact of Safety Record: How does a contractor's safety record affect insurance rates—does it have a significant impact? How much of a discount is normally offered for a good safety record?
- n. Maximum Mandated DBA Rates: What is your position on the Department mandating maximum DBA rates based upon job description (classification), geography (e.g., Iraq vs. Germany) and loss experience? What would be your response to having to file your proposed rates with the DoD for approval each year, based upon your own individual loss experience and trending?
- o. WHA Claims: Please provide the percent of DBA claims that are initially believed to be War Hazard Act (WHA) claims. Please provide the percent of initial WHA claims that are later determined by DoL not to be WHA claims. How long on average, does it take

DoL to settle and reimburse the insurance carrier for WHA claims? Typically, does DoL pay the entire WHA claim amount the carrier submits—if not, what is the average percent?

#### 4. Specific Questions for DoD Contractors

In addition to the questions in 1 and 2 above soliciting information from all interested parties, the Department would appreciate additional responses from DoD contractors to the following questions:

- a. Current Practice: How do you acquire your DBA coverage today? Do you purchase insurance or are you an approved self-insurer for this coverage?
- b. Purchased Insurance: If you purchase your DBA insurance, is it (a) acquired through a stand-alone insurance policy; (b) acquired through a multiline insurance program with DBA coverage separately priced; (c) acquired through a multiline insurance program with DBA coverage not separately priced?
- c. Supplemental Coverage: Do you supplement the standard DBA coverage for employees with medical assistance or additional life or disability coverage? Do you do so (a) for all DBA covered employees; (b) only for specific categories of employees? Are the premiums for any such coverage? (a) paid for in full by the company? (b) paid for in part by the company and in part by the employee?; or (c) paid in full by the employee?
- d. Subcontractors: Do you recommend that subcontractors obtain their own individual policies, or do you recommend that the prime contractor purchase the insurance for all its subcontractors (at all tiers)?
- e. Discounts: By including DBA insurance with other insurance coverage, what type of discount is typically obtained on DBA insurance?
- f. Impact of Safety Record: How does a contractor's safety record affect insurance rates—does it have a significant impact? How much of a discount is normally offered for a good safety record?



# Appendix C

## DOD Internal Data Call



**ACQUISITION  
TECHNOLOGY  
AND LOGISTICS**

**OFFICE OF THE UNDER SECRETARY OF DEFENSE  
3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000**

DEC 16 2008

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
COMMANDER, UNITED STATES TRANSPORTATION  
COMMAND (ATTN: ACQUISITION EXECUTIVE)  
DEPUTY ASSISTANT SECRETARY OF THE ARMY  
(POLICY AND PROCUREMENT), ASA (ALT)  
DEPUTY ASSISTANT SECRETARY OF THE NAVY  
(ACQUISITION & LOGISTICS MANAGEMENT),  
ASN (RDA)  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DIRECTORS OF THE DEFENSE AGENCIES  
DIRECTORS OF THE DoD FIELD ACTIVITIES

SUBJECT: Request for Data on Defense Base Act (DBA) Insurance

As required by Section 843 of the FY 2009 National Defense Authorization Act (Public Law 110-417), the Department must adopt an acquisition strategy by June 2009 for insurance required by the Defense Base Act (42 U.S.C. 1651 et seq.). This strategy must minimize the cost of such insurance to the Department and to defense contractors subject to the Act and consider such options as entering into a single Department-wide DBA insurance contract.

Please provide the data requested in the attached Excel file for any contracts that have overseas performance or otherwise require DBA insurance coverage for prime contractors or their subcontractors. Also, provide the name and title, telephone number and email address of the primary point of contact for this request for your DoD Component. Lastly, provide the name and contact information for the person who may represent your DoD Component on the Department's team to develop the acquisition strategy for DBA insurance.

Please provide your electronic responses, including the Excel file, by January 11, 2009 to Ms. Teresa Lawson at [Teresa.Lawson@osd.mil](mailto:Teresa.Lawson@osd.mil). She can also be reached at (703) 602-2402.

Shay D. Assad  
Director, Defense Procurement

Attachment:  
As stated

