

PRESENTATION TO THE COMMITTEE ON OVERSIGHT AND
GOVERNMENT REFORM

UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: KAISERSLAUTERN MILITARY COMMUNITY CENTER PROJECT

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The Kaiserslautern Military Community Center (KMCC), currently under construction at Ramstein Air Base, Germany, is a vital quality of life project for our people serving in Europe and for those transiting the airlift hub at Ramstein Air Base. When complete, it will serve as a modern, multi-use community center providing retail, lodging, dining, banking, entertainment and theaters under one roof. Strategically located across from the Ramstein Passenger Terminal, it will offer a variety of food selections, services, and products to transient guests, outlying military communities and the 55,000 American personnel and family members in the Kaiserslautern Military Community.

With the closure of Rhein Main Air Base in December 2005, Ramstein Air Base became the primary gateway for U.S. military personnel arriving in or transiting Europe. The \$182 million project is currently the largest single facility construction project in the U.S. Department of Defense. Construction began with preliminary site clearing in November 2003 and a groundbreaking in the summer of 2004. The facility is scheduled to open in two phases with the Visiting Quarters opening first, followed by the AAFES shopping center. The KMCC project is presently 77% complete, but is currently 18 months late based on the original December 2005 need date for the Visitors Quarters.

The Auftragsbaugrundsätze 1975 (ABG-75) Administrative Agreement is a bilateral agreement between the United States Forces and the Federal Republic of Germany (FRG), applicable to all U.S. Forces construction in Germany. The U.S. is bound by Article 49 of the FRG Supplementary Agreement to the NATO Status of Forces Agreement (SOFA), which gives the German government the right to carry out all construction works for all sending state forces in Germany, with limited exceptions. The agreement is between the Federal Minister for

Regional Planning, Building and Urban Development and the sending state government.

Dispensing or changing the SOFA agreement requires a joint effort by all sending state forces.

In accordance with ABG-75, German authorities plan, enter construction contracts, and administer construction on behalf of U.S. Forces and according to the ABG-75 article 4.1, “in their own name and on their own responsibility.” U.S. personnel coordinate with German state construction authorities to design, contract for, and perform the construction management of a project in accordance with the ABG-75.

Significant differences exist in methods and practices of construction between U.S. and Germany. In general, German federal construction law shields contractors from much of the risk routinely borne by U.S. construction firms; therefore, owners have less leverage and recourse than provided for under the Federal Acquisition Regulations used in stateside construction.

The trend over the past several years has been that construction in Germany is usually completed at a cost that is less than the Congressionally authorized and appropriated amount. Of the 35 MILCON projects in Germany since the year 2000, 75% have been completed under the congressionally authorized and appropriated amount and 100% completed within the U.S. Air Forces approval authority. The quality of construction in Germany has also been generally good over the past several years and our main recurring concern has been schedule.

According to ABG-75, the decision as to the method of contracting is clearly within the German government’s rights, so the U.S. has little influence over acquisition strategies. In order to promote work for smaller contractors in the local community surrounding Ramstein, the Oberfinanzdirektion Koblenz Geschäftsbereich Bundesbau (GBB), Landesbetrieb Liegenschafts- und Baubetreuung’s (LBB) parent organization for financial matters, recommended that “trade-based contracts” (trade lots) be used vice a general contractor.

One of USAFE's major interests was to get the project started in order to be completed by December 2005, replacing contingency lodging located on the former Rhein-Main Air Base. A "fast track" delivery method was required to allow contracts to be awarded as designs for specific trades were completed.

At the outset of the project, U.S. oversight was staffed based on reasonable confidence in our service agent (LBB-KL) and the expectation that it would competently perform its construction agent duties. U.S. project internal controls were also based on this expectation as well as past positive construction experience dealing with LBB.

In September 2006, when project indicators (financial and schedule) began slipping, HQ USAFE project team oversight staff expanded from 8 personnel to 17. HQ USAFE procured claims analyst support in December 2006 to provide expertise in German construction contracting, evaluate and document controversial billings, and to prepare a comprehensive defense to protect the U.S. from future claims for extended overhead due to schedule delays.

When USAFE learned of further irregularities, communication was expanded with LBB and users. USAFE senior staff met monthly with various German State ministers in an effort to overcome ABG-75/LBB obstacles and create ways to move the project forward. Very senior members of USAFE and the German government have been devoting a great deal of their attention to construction management issues on this project.

This project suffers from three fundamental management problems: 1) absence of a general contractor, 2) inadequate quality control, and 3) ineffective contract management.

Trade-lot contracts were employed on the KMCC project rather than a general contractor. The LBB-Kaiserslautern office is responsible for the project's delivery; LBB in turn contracted with the Architectural/Engineering (A-E) design firm JSK Internationale Architekten und

Ingenieure GmbH (JSK) to carry out design and on-site construction management responsibilities. Although the trade lot acquisition strategy expedited contract awards, it contributed significantly to the complexity of post-award contract management shifting “general contractor” responsibilities to LBB and JSK.

No integrated, comprehensive, contractual schedule existed, from either JSK or LBB, for all contractors to follow. This fundamental project management tool was never effectively produced, coordinated, managed or adhered to by LBB, thus work progress was regularly hindered by conflicting activities of individual trades. LBB dismissed JSK in September 2006 for failing to properly fulfill its responsibilities for completing designs, scheduling, and coordinating the work of the contractors. LBB has since assumed the role of general contractor.

LBB is responsible for enforcing quality practices on contractors to include compliance with contract specifications and industry standards. The most prominent example of poor enforcement of quality and enforcement of contract specification is the deficient roof that now requires nearly complete replacement.

Ineffective contract management is an issue that became apparent in the summer of 2006 when LBB presented the U.S. a list of 549 change orders requiring contract action. Most of the work contained in the list had been performed at the direction of LBB or JSK, and the U.S. had no prior knowledge the work had been directed. Based on this problem, we have repeatedly asked that LBB/GBB find a streamlined way to eliminate the change order backlog. Failure to execute timely contract actions during the course of construction hampered the U.S.’s ability to pay invoices for work performed in good faith by the contractors.

Invoice processing procedures were strengthened to include clearly defined “Rules of Engagement” coordinated by the HQ USAFE staff. The U.S. has been presented large numbers

of invoices that included work directed by LBB and JSK, but never documented on an ABG-5. To a great extent, withholding payment is the U.S.'s only real control over construction processes, but it is a double-edged sword that refusing to pay invoices causes work to slow down.

LBB, as service agent, has the responsibility to certify all partial invoices that are submitted to USAFE for payment. USAFE's responsibility is to exercise due diligence to validate the certified, partial payment invoices from LBB, and provide funding. Evidence of Air Force close scrutiny of partial invoice documentation is that from October 2006 to May 2007, of the 71 partial invoices processed, 54 (76%) were found to contain irregularities of some kind, were disputed for payment, and returned to LBB.

In the area of financial controls, the ABG-75 is the first line of defense in protecting U.S. resources and interests. The second line of defense is the construction agent, LBB, and the agent's effectiveness in controlling contractor quality and cost. The third line of defense is the Air Force's management controls.

Claims on this project fall into two categories: A-E liability claims LBB will make against the project's Architect/Engineer firm on behalf of the U.S., and hindrance claims contractors make against LBB which eventually may be assessed to the U.S. Given the magnitude and extent of this project's management problems, we anticipate claims settlement will in time be resolved pursuant to Article 40.2 of ABG-75 through negotiations between German Government construction authorities and senior U.S. representatives. In December 2006, USAFE procured the support of a highly qualified firm specializing in German construction contracting and claims management.

LBB is responsible for holding A-E firms responsible for the quality of their work and on behalf of U.S. interests will pursue recovery of damages. To date, LBB and USAFE have identified 132 change orders valued at €6 million deemed A-E liability related to design errors. The U.S. continues to scrutinize each change order for potential A-E liability upon receipt from LBB and again during technical negotiations.

Late delivery of design information and mis-coordination of the work are the two most prevalent and significant causes of hindrance claims contractors will make against LBB. LBB recognizes that its construction management agent (JSK) in many regards failed to satisfactorily or properly fulfill its responsibilities in managing delivery of the KMCC project.

Key lessons from the project have been widely shared with auditors and GAO reviewers because of their value and application in future USAFE projects. LBB needs to more effectively plan and perform its construction management responsibilities and have back-up plans when key responsibilities are contracted, as with JSK on this project. All aspects of pre-design planning and acquisition strategies need to be developed, and LBB should obtain U.S. concurrence on acquisition strategies despite absence of ABG-75 language making this a requirement.

Specifically:

- a) a general contractor (vice trade contracts) should be used on every U.S. project to keep centralized control, responsibility, and liability;
- b) construction manager and A-E designer must be independent (unless contracted as a design-build project);
- c) designs should be completed prior to awarding construction contracts;
- d) project management plans (including quality control plan) are vital to control the work and manage risk;

- e) modifications need to be submitted timely and in pace with construction;
- f) require annual training for personnel on the ABG-75 Agreement;
- g) and, properly train and appoint Departmental Accountable Officials.

USAFE and LBB will continue to make adjustments to management to ensure the right leadership is in place. The LBB project leadership staff (three personnel) was replaced in April 2007. The new team is currently working to familiarize themselves with the project issues and developing strategies to solve the problems discussed above. A key task for this new team is to develop a realistic construction schedule which can be enforced.

USAFE and LBB will continue to attack the backlog of change orders to provide relief in making invoice payments. This problem represents the principal stress on cash flow requirements to the contractors. Focus on this process and execution of contract changes is critical to work progress. USAFE and LBB will continue to partner with presidents of contracted firms. Direct conversations with key contractors has yielded increased workforce in the past and avoided contractor walk-offs. USAFE will continue forensic evaluation of change orders in preparation for pending claims defense and funds recovery. USAFE and LBB are evaluating options to alter existing contracts with contractors on site.

This statement briefly addresses USAFE's concerns regarding root causes of the poor project execution and USAFE's view regarding what will be required to bring the project to completion. Significant problems urgently confront the KMCC. The KMCC presents few clear, easy choices and little middle ground, and challenges the best professional judgment of a variety of disciplines. These are the issues USAFE leadership and project managers confront daily in completing this project.