

(B) If the government objects to the proposed defense witness, defense counsel may request that the preliminary hearing officer determine whether the witness is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing.

(C) If the government does not object to the proposed civilian witness or the preliminary hearing officer determines that the civilian witness's testimony is relevant, not cumulative, and necessary, counsel for the government shall invite the civilian witness to provide testimony and, if the individual agrees, shall make arrangements for that witness's testimony. If expense to the government is to be incurred, the convening authority who directed the preliminary hearing, or the convening authority's delegate, shall determine whether the witness testifies in person, by video teleconference, by telephone, or by similar means of remote testimony.

(3) *Other evidence.*

(A) *Evidence under the control of the government.*

(i) Prior to the preliminary hearing, defense counsel shall provide to counsel for the government a list of evidence under the control of the government the accused requests the government produce to the defense for introduction at the preliminary hearing. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the government shall respond that either: (1) the government agrees that the evidence is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and shall make reasonable efforts to obtain the evidence; or (2) the government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.

(ii) If the government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced.

The preliminary hearing officer shall determine whether the evidence is relevant, not cumulative, and necessary based on the limited scope and purpose of the hearing. If the preliminary hearing officer determines that the evidence shall be produced, counsel for the government shall make reasonable efforts to obtain the evidence.

(B) *Evidence not under the control of the government.*

(i) Evidence not under the control of the government may be obtained through noncompulsory means or by *subpoenas duces tecum* issued by counsel for the government in accordance with the process established by R.C.M. 703.

(ii) Prior to the preliminary hearing, defense counsel shall provide to counsel for the government a list of evidence not under the control of the government that the accused requests the government obtain. The preliminary hearing officer may set a deadline by which defense requests must be received. Counsel for the government shall respond that either: (1) the government agrees that the evidence is relevant, not cumulative, and necessary for the limited scope and purpose of the preliminary hearing and shall issue *subpoenas duces tecum* for the evidence; or (2) the government objects to production of the evidence on the grounds that the evidence would be irrelevant, cumulative, or unnecessary based on the limited scope and purpose of the preliminary hearing.

(iii) If the government objects to production of the evidence, defense counsel may request that the preliminary hearing officer determine whether the evidence should be produced. If the preliminary hearing officer determines that the evidence is relevant, not cumulative, and necessary based on the limited scope and purpose of the preliminary hearing and that the issuance of *subpoenas duces tecum* would not cause undue delay to the preliminary hearing, the preliminary hearing officer shall direct counsel for the government to issue *subpoenas duces*