



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

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

JAN 18 2008

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY
AND SUPPLY DIRECTORATE (DLA)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Interagency Acquisition

- References: (a) "Interagency Acquisition: A Shared Responsibility" memo dated September 20, 2005 (U) (copy attached)
- (b) "Designation of Contracting Officer's Representatives on Contracts for Services in Support of Department of Defense Requirements" memo dated December 6, 2006 (U) (copy attached)
- (c) "Non-Economy Act Orders" memo dated October 16, 2006 (U) (copy attached)
- (d) "Past Performance Information" memo dated November 27, 2007 (U) (copy attached)
- (e) "Proper Use of Non-DoD Contracts" memo dated October 29, 2004 (U) (copy attached)

The purpose of this memorandum is to update the Department's policy on interagency acquisition and provide clarification of existing policy.

Proper Use of non-DoD Contracts and non-DoD Contracting Organizations

The Department encourages the use of non-DoD contracts and the services of assisting agencies to meet DoD requirements, when it is done properly, is in the best interest of the Department, and necessary to meet our needs. Utilizing a non-DoD contract or a non-DoD contracting organization is ultimately a business decision. As part of that process, DoD customers should be cognizant of the advantages that exist for the Department in utilizing interagency contracting, and they should be knowledgeable of



what contracting options are available to them, while considering the fees charged by the assisting agency and costs incurred by the Department. The fees that we pay should be commensurate with the task and effort provided by the assisting agency. Program managers and requirements officials must ensure that any fees paid to the assisting agencies are reasonable for the tasks they perform.

Roles and Responsibilities:

Reference (a) addressed the importance of teamwork and communication in the interagency acquisition process. This requirement has not changed; however, I want to comment further on the roles and responsibilities of the program managers and requirements officials, assisting agencies and contracting officers. While the following does not encompass all roles and responsibilities, it represents a few I would like to focus on.

Program Managers and Requirements Officials: Program managers and requirements officials must ensure non-DoD contracting officers use competitive procedures to acquire DoD requirements to the maximum extent possible. In the case of a sole source procurement, program managers and/or requirements officials, after performing due diligence and market research, must provide the assisting agency with the written justification for the non-competitive or sole source determination/justification in accordance with FAR 6.3 or FAR 8.405-6 if using GSA's Multiple Award Schedules. When using multiple award contracts, program managers and requirements officials should assist in documenting that exceptions to the fair opportunity process, if appropriate, are necessary and meet the requirement for statutory exception (FAR 16.505). All justifications must be well supported and clearly documented in the contract file.

Program managers and requirements officials must ensure that statements of work/requirements clearly, precisely, and completely specify the item or service to be procured. Well defined and complete acquisition packages must be provided to the assisting agency. While it is the contracting officer's responsibility to ensure that contract management, oversight, and surveillance functions are clearly assigned (including the appointment of properly trained Contracting Officer Representatives (CORs) where appropriate) and correctly performed (see reference (b)), the program manager and requirements officials should be actively involved in the process.

With regard to Non-Economy Act procurements, program managers and requirements officials must ensure that the requirements detailed in Reference (c) are met, including the required review by a DoD contracting officer when the value of the action exceeds \$500,000. The "Non-Economy Act Acquisition Package Checklist" and the list of "Requesting Official Responsibilities" in Reference (c) will assist in ensuring that statute, policy, and regulation are complied with under non-Economy Act actions.

Assisting Agencies: It is the assisting agency's responsibility to ensure its acquisition workforce is capable, qualified, and authorized to acquire the requested supplies/and or services on behalf of DoD. Ultimately under an assisted acquisition, the assisting agency decides whether a specific action will be competed. In addition, the assisting agency must ensure that DoD requirements met via an interagency acquisition, are compliant with statute, regulation and policy, even if it is more limiting than the practices under which the assisting agency is authorized to operate.

Assisting agencies also must comply with FPDS-NG reporting requirements and ensure determinations of price reasonableness are documented for every contract or order they execute on our behalf. In addition, when an assisting agency places a contract on the Department's behalf that meets DoD thresholds for capturing past performance information (see Reference (d) Attachment A), then contractor performance should be evaluated, the information provided to the contractor for review and comment, and when finalized, the information should be captured in the automated past performance information database.

Contracting Officer: In accordance with Reference (c), it is Department policy that a warranted DoD contracting officer review each non-Economy Act order greater than \$500,000 to ensure it complies with statute, policy, regulation, and local component requirements and procedures.

Past Performance - A Shared Responsibility

Reference (a) emphasized that "teamwork and communication" are critical to the success of interagency acquisition and that all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed. This is especially important in performing assessments of contractor past performance (FAR 42.15). Reference (d) provides the Department's latest policy on past performance information and emphasizes that past performance information should be captured for all contracts that meet DoD thresholds. Interagency acquisitions are not exempt from this requirement.

Clarification

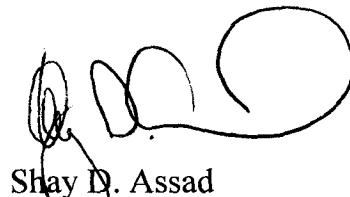
Reference (e) provided process details for Military Departments and Defense Agencies utilizing non-DoD contracts or non-DoD contracting organizations. The procedures included "providing unique terms, conditions and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements, (e.g. the requirement that all clothing procured with DoD funding be of domestic origin)". This should not be interpreted as requiring non-DoD assisting agency contracting officers

to include DFARS or other agency specific clauses in their resulting contracts or orders, although this is acceptable. Alternatively, DoD officials and the civilian assisting agency contracting officer must collaboratively review the DoD requirements to ascertain whether there are non-DoD contract clauses that provide similar and sufficient coverage. If non-DoD contract clauses are insufficient, both parties shall mutually agree to include such coverage as necessary, through revision of the performance work statement, statement of work, statement of objectives, or otherwise. This process should also be followed when civilian agencies request work under DoD contracts.

Policy links, training opportunities, and other relevant information on Interagency Acquisition is available on the Defense Procurement and Acquisition Policy website at http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html#acquisition_policy_memos and the GSA website at <http://www.gsa.gov/Portal/gsa/ep/home.do?tabId=13>.

Additional guidance on Non-Economy Act Orders can be found in Reference (c), which revised financial management policy for Non-Economy Act Orders. The memorandum includes important policy requirements, especially in the areas of justification, certification of funds, bona fide need and deobligation. In addition, it includes policy on severable services, non-severable services and excess or expired funds.

My POC for Interagency Acquisition is Mr. Michael Canales. He can be reached at michael.canales@osd.mil or at 703-695-8571.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large circular flourish at the end.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy



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

SEP 20 2005

ACQUISITION
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR: SEE DISTRIBUTION

Subject: Interagency Acquisition: A Shared Responsibility

On July 29, 2005, the United State Government Accountability Office (GAO) issued a report entitled "Interagency Contracting: Franchise Funds Provide Convenience, but Value to DoD is Not Demonstrated (GAO Report GAO-05-546)" which, among other things, emphasized to both the Department of Defense (DoD) and the assisting agencies the importance of understanding shared responsibilities in the interagency acquisition process. The report can be found at <http://www.acq.osd.mil/dpap/specificpolicy/index.htm>.

Teamwork and communication are critical to the success of interagency acquisitions. Although the Federal Acquisition Regulations state that it is ultimately the contracting officer's responsibility to determine if a procurement package is sufficient for use in a solicitation, order, or contract, it is incumbent upon the DoD customer to provide the assisting agency with sufficient detail concerning the requirement. When using an assisting agency to issue a solicitation, place an order, or issue a contract on our behalf, DoD customers must ensure that their requirements are clearly defined, and include measurable outcomes desired. Similarly, all parties to an interagency acquisition must ensure that the duties and responsibilities of contract administration and oversight are clearly assigned and correctly performed.

The decision to meet DoD mission needs via an interagency acquisition is a business decision. DoD and the assisting agencies have a shared responsibility when an interagency acquisition is determined to be the right approach to meet DoD requirements. This shared responsibility begins with acquisition planning and does not end until contract close-out. The DoD policy on the "Proper Use of Non-DoD Contracts" can be found at <http://www.acq.osd.mil/dpap/specificpolicy/index.htm>. My point of contact is Mike Canales. He can be reached at 703-695-8571 or via e-mail at michael.canales@osd.mil.

Domenic C. Cipicchio
Acting Director, Defense Procurement
and Acquisition Policy



DISTRIBUTION:
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OFFICE OF THE UNDER SECRETARY OF DEFENSE

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DEC 06 2006

ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR DIRECTORS, DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA(ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
EXECUTIVE DIRECTOR, ACQUISITION, TECHNOLOGY
AND SUPPLY DIRECTORATE (DLA)
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, ARMY CONTRACTING AGENCY

SUBJECT: Designation of Contracting Officer's Representatives on Contracts for Services in Support of Department of Defense Requirements

I am concerned that the post-award management of contracts for services in support of Department of Defense (DoD) requirements needs more focus and rigor. Organizations that review DoD contracts for services, including the Government Accountability Office and the DoD Inspector General, continue to identify weaknesses in this key function.

The role of a Contracting Officer's Representative (COR) is to assist in the technical monitoring or administration of a contract. DoD requirements related to designation of CORs are contained in the Defense Federal Acquisition Regulation Supplement (DFARS) at 201.602-2, Responsibilities, and in the DFARS Procedures, Guidance and Information (PGI) at 201.602-2, Responsibilities.

Accordingly, please ensure that a properly trained COR is designated for contracts for services in support of DoD requirements before contract performance begins, and that properly trained CORs are identified on active contracts for services in support of DoD requirements. In addition, please ensure that the contribution of CORs in assisting in the monitoring or administration of contracts is addressed as appropriate in the performance reviews of individuals who perform COR duties. COR training is available via a web-based module, CLC 106, "COR with a Mission Focus" at www.dau.mil.

Thank you for your support in our continuing efforts to improve the efficiency and effectiveness of contracts for services in support of DoD requirements.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy





COMPTROLLER

UNDER SECRETARY OF DEFENSE
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OCT 16 2006

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
COMMANDERS OF THE COMBATANT COMMANDS
DIRECTOR, DEFENSE RESEARCH AND ENGINEERING
COMMANDER, U.S. SPECIAL OPERATIONS COMMAND
COMMANDER, U.S. TRANSPORTATION COMMAND
ASSISTANT SECRETARIES OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE
ASSISTANTS TO THE SECRETARY OF DEFENSE
DIRECTORS OF DEFENSE AGENCIES
DIRECTORS DOD FIELD ACTIVITIES

SUBJECT: Non-Economy Act Orders

Attached is the Department's revised financial management policy for Non-Economy Act orders. This policy should be implemented immediately throughout your respective organization. It will be included in the next update to the "DoD Financial Management Regulation," scheduled for first quarter of fiscal year 2007.

My point of contact is Ms. Kathryn Gillis. She can be contacted by telephone at (703) 697-6875 or e-mail at Kathryn.gillis@osd.mil.

Robert McNamara
Acting Deputy Chief Financial Officer

Attachments:
As stated



NON-ECONOMY ACT ORDERS

A. Purpose. Prescribe policy and procedures applicable to Department of Defense (DoD) procurement of goods and services from Non-DoD agencies under statutory authorities other than the Economy Act.

B. Overview. Non-Economy Act orders are for intra-governmental support, where a DoD activity needing goods and services (requesting DoD agency/customer) obtains them from a Non-DoD agency (assisting/servicing agency/performer). Specific statutory authority is required to place an order with a Non-DoD agency for goods or services, and to pay the associated cost. If specific statutory authority does not exist, the default will be the Economy Act, 31 U.S.C. 1535 which is discussed in volume 11A, Chapter 3 of the “DoD Financial Management Regulations” (“DoDFMR”). The more commonly used Non-Economy Act authorities include, but are not limited to, the following.

- Acquisition Services Fund. The Acquisition Service Fund was established by the General Service Administration Modernization Act that merged the General Supply Fund and the Information Technology Fund to carry out functions related to the uses of the Acquisition Services Fund including any functions previously carried out by the Federal Supply Service and the Federal Technology Service managed by General Service Administration.
- Franchise Funds. Franchise Funds were first established by P.L. 103-356, Title IV, Sec 403 to provide common administrative support services on a competitive and fee basis. Franchise fund programs originated within the Environmental Protection Agency (EPA), Department of Commerce, Department of Veterans Affairs (VA), Department of Health and Human Services (HHS), Department of Interior, and Department of the Treasury.

C. Initiating a Non Economy Act Order. Non-Economy Act orders in excess of the simplified acquisition threshold shall comply with Federal Acquisition Regulation (FAR) Part 7, “Acquisition Planning,” and DoD Components’ procedures for the “Proper Use of Non-DoD Contracts.”

1. Justification. Non-Economy Act orders may be placed with another agency for goods or services if:

- Proper funds are available;
- The Non-Economy Act order does not conflict with another agency’s designated responsibilities (e.g., real property lease agreements with GSA).

- The requesting agency or unit determines the order is in the best interest of the Department; and
- The performing agency is able and authorized to provide the ordered goods or services.

2. Order. Non-Economy Act orders for work and services outside the Department of Defense (DoD) should be executed by issuance of a DD Form 448, “Military Interdepartmental Purchase Request (MIPR)” and accepted using DD Form 448-2, “Acceptance of MIPR.” If an alternative execution document is used, it must provide information consistent with the MIPR to include the purchase request number and the Activity Address Code (DODAAC). A Non-Economy Act order shall comply with the documentation standards in Volume 11A, Chapter 1 of the “DoDFMR,” and supported with the items identified in Figure 1. Non-Economy Act orders must include:

- A firm, clear, specific, and complete description of the goods or services ordered. The use of generic descriptions is not acceptable;
- Specific performance or delivery requirements;
- A proper fund citation;
- Payment terms and conditions (*e.g.*, direct cite or reimbursement, and provisions of advanced payments); and
- Specific Non-Economy Act statutory authority such as those referenced in paragraph B above.
- DoD Activity Address Code (DODAAC)

3. Best Interest Determination. Each requirement must be evaluated in accordance with DoD Components’ procedures to ensure that Non-Economy Act orders are in the best interest of DoD. Factors to consider include:

- Satisfying the requirements;
- Schedule, performance, and delivery requirements;
- Cost effectiveness, taking into account the discounts and fees; and
- Contract administration, to include oversight.

4. Specific, Definite and Certain. For Non-Economy Act orders in excess of the simplified acquisition threshold, the requesting official must provide:

- Evidence of market research and acquisition planning;
- A statement of work that is specific, definite, and certain both as to the work encompassed by the order and the terms of the order itself.
- Unique terms, conditions, and requirements to comply with applicable DoD-unique statutes, regulations, directives and other requirements.

5. Contracting Officer Review. All Non-Economy Act orders greater than \$500,000 shall be reviewed by a DoD warranted contracting officer prior to sending the order to the funds certifier or issuing the MIPR to the Non-DoD activity. In addition to the review of the contracting officer, the requesting official shall further review the acquisition package to ensure compliance with the FAR part 7, and the DoD Components' procedures.

6. Certification of Funds. Non-Economy Act orders are subject to the same fiscal limitations that are contained within the appropriation from which they are funded. Because the performing entity may not be aware of all the appropriation limitations, the DoD certifying official must certify that the funds cited on the order are available, meet time limitations, and are for the purpose designated by the appropriation.

7. Bona Fide Need. Non-Economy Act orders citing an annual or multiyear appropriation must serve a bona fide need arising, or existing, in the fiscal year (or years) for which the appropriation is available for new obligations.

D. Fiscal Policy.

1. Obligation. The provisions of 31 U.S.C. 1501 govern the recording of the obligation. An amount shall be recorded as an obligation only when supported by documentary evidence of an order required by law to be placed with an agency or upon meeting all the following criteria:

- Binding agreement (funding vehicle) between an agency and another person (including an agency);
- Agreement is in writing;
- For a purpose authorized by law;

- Serves a bona fide need arising, or existing, in the fiscal year or years for which the appropriation is available for obligation;
- Executed before the end of the period of availability for new obligation of the appropriation or fund used; and
- Provides for specific goods to be delivered, real property to be bought or leased, or specific services to be supplied.

2. Deobligation. Funding under Non-Economy Act orders shall be deobligated as outlined below.

a. Goods. Funds provided to a performing agency for ordered goods where the funds period of availability thereafter has expired shall be deobligated and returned by the performing agency unless the request for goods was made during the period of availability of the funds **and** the item(s) could not be delivered within the funds period of availability solely because of delivery, production or manufacturing lead time, or unforeseen delays that are out of the control and not previously contemplated by the contracting parties at the time of contracting. Thus, where materials cannot be obtained in the same fiscal year in which they are needed and contracted for, provisions for delivery in the subsequent fiscal year do not violate the bona fide need rule as long as the time intervening between contracting and delivery is not excessive and the procurement is not for standard commercial off the shelf (COTS) items readily available from other sources. The delivery of goods may not be specified to occur in the year subsequent to funds availability.

b. Severable Services. An agreement for severable services that are continuing and recurring in nature and provide the Department a benefit each time the service is performed (e.g., maintenance and repair services, scientific, engineering, and technical services) is based on statutory authority other than the Economy Act, 10 U.S.C. 2410a permits the performance of severable services to begin in one fiscal year and end in the next provided the period of performance does not exceed one year. Thus, the performance of severable services may begin during funds period of availability and may not exceed one year. Therefore, annual appropriations provided to a performing agency that have expired shall be deobligated unless the performance of the services requested began during the funds period of availability and the period of performance does not exceed one year. The annual appropriation from the earlier fiscal year may be used to fund the entire cost of the one-year period of performance; however, an annual appropriations may not be used to enter into a severable services agreement where the period of performance for services requested is entirely in the following fiscal year. In no instance may the period of performance extend beyond September 30 of the subsequent year for services funded with annual appropriations.

c. Non-Severable Services. Non-severable services contracts must be funded entirely with appropriations available for new obligations at the time the contract is awarded, and the period of performance may extend across fiscal years. Funds provided to a performing agency that become excess shall be deobligated as identified.

d. Excess or Expired Funds. Activities shall reconcile all obligations and remaining funds available for orders. The purpose of this reconciliation is to ensure the proper use of funds and to identify and coordinate the return of expired or excess funds. Excess or expired funds must be returned by the performing agency and deobligated by the requesting agency to the extent that the performing agency or unit filling the order has not (1) provided the goods or services (or incurred actual expenses in providing the goods or services), or (2) entered into a contract with another entity to provide the requested goods or services. Expired funds shall not be available for new obligations.

3. Prohibitions. Non-Economy Act orders may not be used to violate provisions of law, nor may they be used to circumvent conditions and limitations imposed on the use of funds to include extending the period of availability of the cited funds.

E. Non-Economy Act Follow Up Procedures.

1. Non-Economy Act Order Oversight. The requesting official must establish quality surveillance plans for Non-Economy Act orders in excess of the simplified acquisition threshold to facilitate the oversight of the goods provided or services performed by the performing agency. The plan should include:

- a. Contract administration oversight in accordance with the surveillance plan;
- b. Process for receipt and review of receiving reports and invoices from the performing agency;
- c. Reconciliation of receiving reports and invoices; and
- d. Requirements for documenting acceptance of the goods received or services performed.

2. Monitor Fund Status. The requesting official must monitor fund status to:

- a. Monitor balances with the performing agency;
- b. Conduct tri-annual reviews of Non-Economy Act orders in accordance with the Financial Management Regulation, Volume 3,

Chapter 8, Section 0804, “Tri-Annual Review of Commitments and Obligations;”

- c. Confirm open balances with the performing agency;
- d. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph D2 above; and
- e. Coordinate with the accounting office to ensure timely deobligation of funds.

3. Payment Procedures. Payment shall be made promptly upon the written request (or billing) of the performing agency. Under specific conditions, payment may be made in advance or upon delivery of the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the performing agency.

a. The requesting official must be cognizant of the performing agency’s payment method. Should the performing agency elect to receive advances or conduct advance billing prior to providing goods or services, the requesting official must comply with the requirements related to advances of public money outlined in Volume 4, Chapter 5 of the “DoD Financial Management Regulation” which implements the general prohibition of advance payments in Title 31, U.S.C. Section 3324 and Title 10, U.S.C. Section 2307. When the conditions under which the advance was made are satisfied, the specific appropriation or law authorizing the advance must be cited on the order and any unused amounts of the advance shall be collected from the performing agency immediately and returned to the fund from which originally made.

b. Payments made for services rendered or goods furnished may be credited to the appropriation or fund of the agency performing the reimbursable work.

4. Non Economy Act Order Close Out. All Non-Economy Act orders shall be reviewed by the requesting official to determine if they are complete. Completed orders shall be fiscally closed out. The requesting official shall reconcile funds and coordinate the return of excess or expired funds held by the performing agency. This review will include:

- a. Identify and determine if there are outstanding invoices;
- b. Identify and determine existence of excess or expired funds;
- c. Coordinate the return of funds from the Non-DoD performing agency in accordance with paragraph D2 above; and
- d. Coordinate with the accounting office to ensure the deobligation of funds.

NON-ECONOMY ACT
ACQUISITION PACKAGE CHECKLIST

1. Documented evidence of market research and acquisition planning performed.
2. Package includes a specific, definite, and concise statement of work documenting a bona fide need in the fiscal year that the funds are available for new obligations.
3. Package includes specific performance and/or delivery requirements.
4. Package identifies the statutory authority permitting the performing agency to support the DoD Component for the goods/services required.
5. Package includes the purchase request number and the Activity Address Code (DODAAC).
6. Package includes written justification for the Non Economy Act order in accordance with DFARS Part 217.78 and the DoD Components' procedures.
7. Package documents review of fees/surcharges/contract administration/discounts to ensure the cost is reasonable and consistent with task to be accomplished by performing agency.
8. Package includes specific statutory authority authorizing advance payment or billing.
9. Package documents evidence that DoD competition requirements were followed in accordance with DFARS.
10. Order identifies DoD unique terms & conditions to the performing agency.
11. Order identifies unique reporting requirements not otherwise specified to the performing agency.

REQUESTING OFFICIAL RESPONSIBILITIES

1. Market Research
2. Acquisition Planning
3. Independent Government Cost Estimate (IGCE)
4. Statement of Work (SOW) to include evaluation criteria.
5. Ensure receipt and compliance of MIPR acceptance.
6. Assist in Technical Evaluation
7. Quality Assurance Plan
 - a. COR, COTR (Receiving Reports/Invoices - Inspection & Acceptance)
 - b. CDRL Procedural/Required Reports/Deliverables Report/Contract Performance
 - c. Property/Equipment Management
 - d. Perform Contract Oversight
8. Funds Management/Record Keeping
 - a. Draw Down
 - b. Contract Reconciliation
 - c. Initiate Deobligation
 - e. Oversight of Billing/Reporting
9. Update all POCs as necessary throughout acquisition.

Figure 1



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

ACQUISITION,
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NOV 27 2007

MEMORANDUM FOR DIRECTORS, DEFENSE AGENCIES
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND LOGISTICS MANAGEMENT), ASN
(RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING), SAF/AQC
DEPUTY DIRECTOR, ARMY CONTRACTING AGENCY

SUBJECT: Past Performance Information

Reference Department of Defense Inspectors General (DoDIG) audit reports (<http://www.dodig.osd.mil/Audit/reports/06Report.htm>): (a) "Acquisition: Source Selection Procedures for the Navy Construction Capabilities Contract (D-2006-061)" dated March 3, 2006 and (b) "Defense Infrastructure: DoD Reporting System for the Competitive Sourcing Program (D-2006-028)" dated November 22, 2005.

Past performance information is a tool used to provide feedback to contractors on actual contract performance and the information is utilized in the source selection process. It is important that the acquisition workforce input contractor past performance information into DoD's data capture system, the Contractor Performance Assessment Reporting System (CPARS), whenever a procurement action meets the DoD dollar threshold. All contracts that meet the thresholds stated in Attachment A should be included in CPARS. There is an expectation of noticeable performance improvements and greater efficiency and effectiveness of operations when past performance information is used effectively.

The Office of the Under Secretary of Defense for Acquisition, Technology & Logistics (Defense Procurement and Acquisition Policy) issued "A Guide to Collection and Use of Past Performance Information (Version 3)" dated May 2003 which is available at <http://www.acq.osd.mil/dpap/paic/attachments/guides/ppiguide-2003.pdf>.

The \$1 million threshold for services is applicable to all contracts where the contract is valued at or over \$1 million including unexercised orders and options, and past performance information should be collected. Past performance information should be collected beginning at contract award and for all performance periods, not just the performance periods where the \$1 million threshold was reached or exceeded. If past



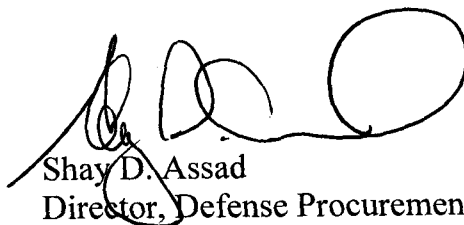
performance information is not captured before a contract reaches the reporting threshold, the information must be captured when it does. Acquisition personnel must amend performance evaluations if significant information about a contractor's performance under a specific order surfaces prior to overall contract closeout. For example, if a contractor doesn't honor extended warranty provisions after a contract ends, that should be noted. Attachment A identifies the thresholds when past performance information must be collected.

DoD Components must also collect past performance information on previously exempt contracts. The DoDIG found seven contracts considered exempt by the respective agencies when awarded under FAR Subpart 8.7 and FAR Subpart 13.5. When thresholds are exceeded under FAR Subparts 8.7 and 13.5, past performance information must be collected.

The Past Performance Information Retrieval System (PPIRS) collects and retains past performance information on contractors for the entire Federal Government. DoD Components are required to load past performance information into CPARS which automatically feeds completed performance assessments to the PPIRS. The CPARS guide is located at <http://cpars.navy.mil/cparsfiles/pdfs/DoD%20CPARS%20Guide%20June%202007.pdf>. Source selection officials access PPIRS when making competitive award decisions. Federal agencies are also collecting contractor past performance information through the use of their own systems which also automatically feed data to the PPIRS.

When documenting past performance, you are encouraged to recognize contractors for their extraordinary efforts and also to indicate when contractors are uncooperative or not responsive during performance for that particular contract or order. This information would be placed in the "Management Responsiveness" or "Business relations" portion of the applicable CPARS assessment.

My point of contact for this memorandum is Ms Sandra K. Ross. She can be reached at 703-695-9774 or email sandra.ross@osd.mil.



Shay D. Assad
Director, Defense Procurement and
Acquisition Policy

Attachment:
As stated

ATTACHMENT A CONSOLIDATED DOD REPORT THRESHOLDS

| <u>Business Sector</u> | <u>Dollar Threshold¹</u> | <u>Reviewing Official²</u> |
|---|-------------------------------------|---|
| Systems (includes new development and major modifications) | >\$5,000,000 | One level above the Program Manager ³ |
| Operations Support | >\$5,000,000 ⁴ | One level above the assessing/evaluating official |
| Fuels | >\$100,000 | |
| Healthcare | >\$100,000 | |
| Services | >\$1,000,000 | One level above the assessing/evaluating official |
| Information Technology | >\$1,000,000 | One level above the assessing/evaluating official |
| Construction | >\$550,000 | One level above the assessing/evaluating official |
| Architect-Engineering | >\$30,000 | One level above the assessing/evaluating official |
| Science and Technology | As required | One level above the assessing/evaluating official |

¹The DoD contract thresholds for contractor performance assessment information (see FAR 42.1502) are based on a DoD class deviation to the FAR and apply to the "aggregate" value of contracts. This means if a contract's original award value was less than the applicable threshold but subsequently the contract was modified and the new value is greater than the threshold, then a performance assessment (or assessments) must be made, starting with the first anniversary that the contract's face value exceeded the threshold. If the total contract value including unexercised options and orders (for IDIQ contracts, the total estimated value of unexercised options and orders) is expected to exceed the collection threshold, initiate the data collection process at the start of the contract. Buying activities may choose to collect performance assessments for awards below these thresholds.

²Only required when the contractor indicates non-concurrence with the CPARS, when the contractor is non-responsive, or if otherwise requested by the contractor during the 30-day comment period.

³Or equivalent individual responsible for program, project or task/job order execution.

⁴For contracts under the \$5M threshold, buying activities should continue to accumulate contractor performance data from existing management information systems, which already capture data on timeliness of delivery and quality of product or service (examples of such performance information collection systems include the Automated Best Value Method, Red/Yellow/Green, and Past Performance Information Retrieval System - Statistical Reporting Module).



OFFICE OF THE SECRETARY OF DEFENSE

1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000



OCT 29 2004

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Proper Use of Non-DoD Contracts

Each year billions of Department of Defense (DoD) dollars are spent using non-DoD contracts to procure supplies and services. In many cases this represents an effective way to accomplish acquisitions in support of DoD's mission. For this reason, the use of non-DoD contracts is encouraged when it is the best method of procurement to meet DoD requirements. However, recent DoD and General Services Administration Inspector General reports identified several issues associated with the Department's use of non-DoD contracts for the acquisition of certain supplies and services. Non-DoD contracts may not be used to circumvent conditions and limitations imposed on the use of funds, nor are they a substitute for poor acquisition planning.

Military Departments and Defense Agencies must establish procedures for reviewing and approving the use of non-DoD contract vehicles when procuring supplies and services on or after January 1, 2005, for amounts greater than the simplified acquisition threshold. This requirement applies to both direct (*i.e.* orders placed by DoD) and assisted acquisitions (*i.e.* contracts awarded or orders placed by non-DoD entities, including franchise funds, on behalf of DoD), using DoD funds. These procedures must include:

- evaluating whether using a non-DoD contract for such actions is in the best interest of the DoD. Factors to be considered include:
 - satisfying customer requirements;
 - schedule;
 - cost effectiveness (taking into account discounts and fees); and
 - contract administration (including oversight);
- determining that the tasks to be accomplished or supplies to be provided are within the scope of the contract to be used;
- reviewing funding to ensure it is used in accordance with appropriation limitations;
- providing unique terms, conditions and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives and other requirements, (*e.g.* the requirement that all clothing procured with DoD funding be of domestic origin); and
- collecting data on the use of assisted acquisitions for analysis.

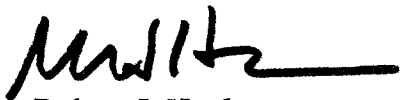


This new policy satisfies the requirements of Section 2330(b)(1)(C)(ii) of Title 10, United States Code as amended by Section 801 of the National Defense Authorization Act for Fiscal Year 2002. Section 801 requires advance approval to buy services via use of a "contract entered into or a task order issued, by an official of the United States outside of the DoD." Although Section 801 applies only to the procurement of services, we are applying this requirement to supplies in order to achieve consistency and discipline in the DoD acquisition process. The Defense Acquisition Regulation Council will issue coverage for the Defense Federal Acquisition Regulation Supplement that is consistent with the requirements of this memorandum.

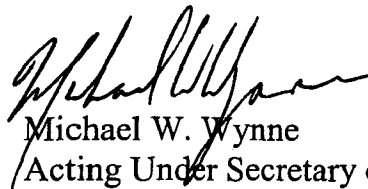
The use of multiple award contracts must be consistent with the requirements of Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Competition Requirements for Purchase of Services Pursuant to Multiple Award Contracts); Federal Acquisition Regulation (FAR) Part 8.002 (Priorities for Use of Government Supply Sources); FAR Part 17.5 (Interagency Acquisitions under the Economy Act); FAR Part 7(Acquisition Planning); and DoD Instruction 4000.19 (Interservice and Intragovernmental Support).

While the Program Manager or requirements official has primary responsibility to ensure compliance with this policy, success will not be achieved without a team approach and specific support from the financial management and contracting communities. For example, the financial management community shall: (1) ensure the program manager or other appropriate individual has certified that the procedures established by the Military Department or Defense Agency have been followed and (2) ensure that funds are available and appropriate for the procurement action.

Please ensure widest dissemination of this memorandum and the procedures you establish. It is imperative that when non-DoD contracts are utilized to meet DoD requirements, they are utilized properly. The point of contact on this matter is Mr. Michael Canales. He can be reached at (703) 695-8571 or via email at michael.canales@osd.mil.



Robert J. Henke
Principal Deputy Under Secretary
of Defense (Comptroller)



Michael W. Wynne
Acting Under Secretary of Defense
(Acquisition, Technology, and Logistics)

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