



SEP 18 1998

Washington, D.C. 20530

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: James A. Sposato
Procurement Executive

SUBJECT: Department of Justice Year 2000 (Y2k) Contracting Policy and Warranty

As you know, my staff has recently conducted a survey of large ADP and other contracts throughout the Department to verify the existence of clauses in those contracts dealing with Y2k compliance and warranties. The results of the survey were disappointing in several aspects and indicated that we, in the procurement community, need to do more to assure that DOJ contracts contain adequate safeguards relative to Y2k compliance. To that end, I am directing that you follow the policies described herein.

I recognize that there are two broad categories of procurements, those currently in existence and new ones, not yet awarded, each with its own set of issues and problems with obtaining contractor agreement on Y2k compliance. Each of these is addressed in turn. Please note that the term 'contract(s)' is intended to denote all procurements which include contracts, purchase orders, delivery and task orders under existing contracts (i.e., Federal Supply Schedule, other federal agency, other DOJ contract, etc.), and BPAs.

Existing Contracts

Existing contracts (especially those involving ADP resources and/or Y2k issues) should be examined to determine if Y2k coverage exists and/or is adequate. Where additional coverage is needed, every effort should be made to obtain agreement of the contractor to the most meaningful clause or statement regarding the Y2k issue. An alternative would be to document the file that the product(s) being provided are known to be Y2k compliant. This alternative must be approved by the Bureau Procurement Chief in writing. I strongly encourage you to enter into negotiations at the time of option exercise to ensure contractor compliance and to give consideration to not renewing contracts with non-compliant vendors.

New Contracts

Effective immediately, all new contracts must include a statement that the products furnished are in compliance with Year 2000 (Y2k) requirements. The attached Year 2000 Warranty is provided for that purpose. It is imperative that we only do business with vendors willing to accept such a warranty. In the case of third party products,¹ the warranty must be passed through to the government. Exceptions to this policy (or modifications to the clause) may only be made with the written approval of the Head of the Contracting Activity or his designee.

Please take whatever steps you deem necessary to assure that this policy is implemented and consistently applied. At the least, you should have this requirement added to internal review checklists for both the pre-solicitation and pre-award phases.

I realize that there is no easy "one size fits all" solution in obtaining Y2k compliance. Each contract and vendor will have to be dealt with separately and may require individually crafted solutions. Problems notwithstanding, I ask for your perseverance and insistence in this matter so that the Department is adequately protected. Please keep me informed of your progress and problems you encounter so that we in the DOJ Procurement Community may share experiences (both good and bad) and learn together.

If you have any questions concerning these procedures or need any assistance, please call H.B. Myers on (202) 616-3758.

Attachment

cc: Director
Office of Small and Disadvantaged
Business Utilization
Justice Management Division

Office of General Counsel
Justice Management Division

¹"Third Party Product" includes products manufactured or developed by a corporate entity independent from the vendor and provided by the vendor on a non-exclusive licensing or other distribution agreement. An example is standard commercial software supplied by the vendor acting as a reseller.

YEAR 2000 WARRANTY

The Contractor represents that the following warranty applies to products provided under this contract/order/BPA:

The Contractor warrants that the products provided under this contract/order/BPA shall be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations.

The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the manufacturer's standard commercial warranty or warranties contained in this contract or the applicable End User License Agreement, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the Government under this warranty shall include an obligation by the Contractor to repair or replace any such product whose non-compliance is discovered and made known to the contractor in writing at any time prior to June 1, 2000 or for a period of six months following acceptance, whichever is the later date. Nothing in this warranty shall be construed to limit any rights or remedies that the Government may otherwise have under this contract.

This warranty shall not apply to products that do not require the processing of date/time data in order to function as specified in this contract/order/BPA.

(9/8/98)