



Department of Defense INSTRUCTION

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ASD(FMP)

SUBJECT: Nonappropriated Fund (NAF) Procurement Procedure

- References:
- (a) DoD Directive 4105.67, "Nonappropriated Fund (NAF) Procurement Policy," May 2, 2001
 - (b) [DoD Directive 1015.1](#), "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities," August 19, 1981
 - (c) [DoD Instruction 1015.13](#), "Department of Defense Procedures Implementing Public Private Ventures (PPVs) for Morale, Welfare, and Recreation (MWR) Category C Revenue-Generating Activities," June 17, 1998
 - (d) General Services Administration, "List of Parties Excluded From Federal Procurement and Nonprocurement Programs," current edition
 - (e) Sections 601-613 of title 41, United States Code

1. PURPOSE

This Instruction implements policy, assigns responsibilities, and prescribes procedures under reference (a) for NAF procurements.

2. APPLICABILITY

This Instruction:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of

Defense (hereafter referred to collectively as the "DoD Components"). The term "Armed Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

2.2. Does not apply to procurements using appropriated funds (APF).

3. DEFINITIONS

Terms used in this Instruction are defined in enclosure 1.

4. POLICY

4.1. DoD Nonappropriated Fund Instrumentalities (NAFIs), governed by reference (b), are instrumentalities of the United States, and may enter into contracts using NAF. NAF procurements shall be accomplished by trained procurement personnel in a fair, equitable and impartial manner, and to the best advantage of the NAFL.

4.2. The Instruction creates no rights or remedies and may not be relied upon by any person, organization, or other non-governmental entity to allege a denial of any rights or remedies.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall prescribe NAF procurement policy.

5.2. The Heads of the DoD Components, or their designees, shall prescribe NAF procurement procedures consistent with DoD Directive 4105.67 (reference (a)), this Instruction, and policies prescribed by the Assistant Secretary of Defense for Force Management Policy.

5.3. The Heads of the DoD Components, or their designees, may delegate the authority to develop procurement procedures to the exchange services.

6. PROCEDURES

Heads of the DoD Components, or their designees, shall address the following minimum procurement procedures:

6.1. The Contracting Authority shall:

6.1.1. Prescribe organizational authority, limitations and levels of approval for solicitation, negotiation, award, administration and termination of contracts, and resolution of protests and contract disputes.

6.1.2 Ensure individual responsibility for properly using NAF resources and preventing waste, loss or unauthorized use. Procedures regarding individual liability for unauthorized commitments of NAF resources shall be specified.

6.1.3 Limit delegation of NAF procurement authority to federally or NAFI employed personnel. Procurement personnel with procurement authority shall be designated in writing via a Certificate of Appointment, a written appointment by position or job title, or an equivalent document. These documents shall state the scope and limitations of NAF procurement authority and be posted within public view or made available on request. Personnel with appropriated fund procurement authority are not required to have a separate certificate of appointment for NAF.

6.1.4. Establish training requirements, continuing education, and certification requirements for procurement personnel based upon the scope and complexity of the NAF procurements to be accomplished.

6.1.5. Ensure that NAF facility leases with an annual cost of \$200,000 or more are reviewed and approved by the Secretary of the Military Department concerned before contract award. NAF facility leases with annual cost in excess of \$500,000 must be submitted to the Assistant Secretary of Defense for Force Management Policy for approval before contract award.

6.1.6. *Ensure that a program is implemented for the military exchanges that assures that private label merchandise is not produced by child or forced labor (reference (a)).*

6.1.6.1. *The program shall include a code of conduct that reflects the values and expectations the exchanges have of their suppliers.*

6.1.6.2. *Military exchanges shall develop an implementation plan for the code of conduct that includes steps to communicate the elements of the code to internal staff, business partners, and factory workers and to train them on these elements.*

6.1.6.3. *Military exchanges shall develop a monitoring effort to ensure the codes of conduct are upheld.*

6.1.6.4. *Military exchanges shall use government agencies, such as the Departments of State and Labor, retailers, and the International Labor Organization as resources for information and insights that would facilitate structuring their program. Military exchanges shall establish ongoing communications with these organizations to help the exchanges stay abreast of information that would facilitate their implementation and monitoring efforts to assure that exchange merchandise is not produced by child or forced labor.*

6.1.6.5. *Military exchanges shall pursue efforts to implement a program jointly to minimize costs where there are opportunities to minimize costs.*

6.2. Solicitation Development and Contract Formation

6.2.1. Each NAF contract shall identify the responsible NAFI. The NAF contract shall state no APF of the United States shall be obligated, due or payable to a contractor.

6.2.2. NAF contracts shall ensure the use of NAF contract clauses in all contracts as required in reference (a).

6.2.3. Solicitations to outsource or privatize NAF activities shall ensure that the NAFI is permitted to award to the entity -- public or private -- that results in an overall lower capital investment, improves performance, and is in the best interest of the authorized patrons. The procedures in reference (c) apply.

6.2.4. Sources of supply are all identifiable potential suppliers. In addition to commercial suppliers, established Government and NAFI contract sources shall be considered. These may include the General Services Administration, Federal Prison Industries, Blind and other Severely Handicapped Workshops, Defense Logistics Agency, Defense Commissary Agency, Exchange Services, Air Force NAF Procurement Office, and U.S. Army Community and Family Support Center.

6.3. Resolution of Protests. The Heads of the DoD Components, or their designees, shall establish procedures for resolution of protests and appeals.

6.4. Contract Award

6.4.1 NAF contracts shall be awarded to responsible offerors and to offerors who offer the best value to the NAFI. NAF contracting officers shall not award contracts to contractors included on the "List of Parties Excluded From Federal Procurement and Nonprocurement Programs" (reference (d)).

6.4.2. NAFIs shall ensure sound cash management principles are considered in procurement decisions. Payment terms shall be set forth in the contract.

6.5. Contract Documentation. The Heads of DoD Components, or their designees, shall establish standards and procedures to ensure sufficient documentation of procurement actions.

6.5.1. Procurement may be documented in an electronic form. Separate documentation standards and procedures may be established for items purchased for resale.

6.5.2. Except for resale items, procurement documentation must contain the requirement for the procurement, statement of funds availability, sources solicited, proposal received, record of negotiations, abstracts or summaries of proposals, determination of responsibility, required approvals, contract award information, record of contract performance and any applicable contract modifications, changes or termination actions.

6.6. Contract Administration

6.6.1. Heads of the DoD Components, or their designees, shall establish standards and procedures to promote the effective administration of procurement actions, including monitoring contractor performance and delivery of receipt of items, services, property and facilities, and legal review.

6.6.2. Reasonable efforts should be made by the contracting officer to resolve claims. Contracting officer decisions on disputes shall be provided in writing and are considered final unless appealed.

6.6.2.1. In disputes that are subject to the Contract Disputes Act of 1978 (reference (e)), the contracting officer's final decision may be appealed to the Armed Services Board of Contract Appeals or the U.S. Court of Federal Claims.

6.6.2.2. In cases where reference (e) does not apply, the contracting officer's final decision in non-resale NAF procurements may be appealed to a level above the contacting officer who issued the decision or other designated authority.

6.7. Advisory Groups. The Heads of the DoD Components, or their designees, shall encourage the establishment of regional-level procurement advisory groups where NAF procurement personnel and legal counsel supporting NAFIs can meet to discuss means of improving procurement actions. Advisory Groups will consist solely of Government employees.

7. EFFECTIVE DATE

This Instruction is effective immediately.



Gail H. McGinn
Acting Assistant Secretary
(Force Management Policy)

Enclosures - 1

E1. Definitions

E1. ENCLOSURE 1

DEFINITIONS

E1.1. TERMS

Following are the definitions:

E1.1.1. Best Value. The expected outcome of a procurement that, in the NAFI's estimation, provides the greatest overall benefit in response to the requirement.

E1.1.2. Construction. Includes construction, installation, or assembly of a new facility; the addition, alteration, expansion, or extension of an existing facility; the relocation of facilities and equipment; the adjustment of interior arrangements or other physical characteristics of a facility; the installation of utilities and equipment made a part of a facility, and related site preparation, excavation, filling and landscaping or other improvements. It includes pouring, dredging, excavating, and painting. It does not include installation of carpet, wall covering, or draperies.

E1.1.3. Contract. An agreement that creates a legal obligation. The elements of a contract are: a mutual agreement; between competent parties; for a legal purpose; involving the exchange of legal consideration; and that creates a mutuality of obligation to perform between the parties. The term contract, as used herein, includes without limitation, formal bilateral contracts, purchase orders, consignment sales agreements, amendments and modifications thereto, as well as other agreements entered into by an authorized contracting officer acting within his or her authority. All NAFI contracts shall be written or documented electronically.

E1.1.4. Contracting Officer. An individual delegated with the authority to legally bind the NAFI by entering into, modifying, administering, and terminating contracts.

E1.1.5. Determination of Contractor Responsibility. The contracting officer's judgment that a prospective contractor has adequate financial and technical resources or the capability to get the resources, and a satisfactory record of performance demonstrating its capacity to perform the contract.

E1.1.6. Exchange Service. The term "Exchange Service" refers to the Army & Air Force Exchange Service, the Navy Exchange Service Command, and the Marine Corps Exchange.

E1.1.7. Items. All property (including articles, materials, supplies, equipment, software and parts) except facilities, land or interest in land.

E1.1.8. Nonappropriated Funds (NAF). Monies derived from sources other than congressional appropriations, primarily from the sale of goods and services to DoD military and civilian personnel and their family members that are used to support or provide Morale, Welfare and Recreation programs.

E1.1.9. Nonappropriated Fund Instrumentality (NAFI). A DoD organization that is supported in whole or in part by NAF. It acts in its own name to provide or assist Secretaries of the Military Departments in providing programs for military personnel and authorized civilians. It is incorporated under the law of any State or of the District of Columbia, but has the legal status of an instrumentality of the United States. As a fiscal entity, it maintains custody of and control over its NAF and also may administer appropriated resources to carry out its purposes.

E1.1.10. Private Label Merchandise. *Includes products carrying the exchange's own name or a name created exclusively for that exchange or more than one exchange.*

E1.1.11. Procurement. Includes purchasing, renting, and leasing of real or personal property; construction (including third party financed projects), renovation and alteration of real property; and obtaining goods and services for either direct use of the NAFI or for resale to its authorized patrons. Procurement also includes all functions that pertain to the selection and solicitation of sources, preparation of award of contracts, and all phases of contract administration. Procurement does not include the determination of requirements, which is the identification of goods, services, or property including quality or performance standards, quantity, and delivery schedule, or the certification of available funds.

E1.1.12. Procurement Action. Includes, but is not limited to: written contracts and purchase orders, delivery orders, task orders, contract modifications, Blank Purchase Agreements, orders placed electronically, and purchases made using the Government Commercial Purchase Card.

E1.1.13. Procurement Personnel. All personnel assigned to a NAF procurement office, including buyers, contracting officers, contract specialists, procurement analysts, contract administrators, purchasing agents, and contracts and procurement clerks.

E1.1.14. Protest. A written objection by an interested party to a solicitation, a proposed award or actual award of a contract.

E1.1.15. Real Property. Includes land and rights in land, ground improvements, utility distribution systems, and buildings and other structures.