



Department of Defense

DIRECTIVE

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Incorporating Change 1, July 30, 2002

ASD(FMP)

SUBJECT: Nonappropriated Fund (NAF) Procurement Policy

- References: (a) DoD Instruction 4105.67, "Nonappropriated Fund Procurement Policy," October 2, 1981 (hereby canceled)
- (b) Title 10, United States Code
 - (c) DoD Directive 1015.1, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities," August 19, 1981
 - (d) DoD Instruction 4105.71, "Nonappropriated Fund (NAF) Procurement Procedure," February 26, 2001
 - (e) through (s), see enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues reference (a), and establishes policy and assigns responsibilities for procurements using NAF.

1.2. Implements reference (b), which authorizes DoD Nonappropriated Fund Instrumentalities (NAFIs) to enter into certain contracts and agreements with other Federal Agencies and instrumentalities.

2. APPLICABILITY AND SCOPE

This Directive:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a 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 Directive are defined in enclosure 2.

4. POLICY

It is DoD policy that:

4.1. DoD NAFIs governed by DoD Directive 1015.1 (reference (c)) 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 NAFI. Either NAF or APF personnel may accomplish NAF procurements. All NAF procurements shall conform to this Directive and DoD Instruction 4105.71 (reference (d)).

4.2. NAF procurements shall use competitive negotiation procedures to the maximum extent practicable. Offers shall be solicited from a reasonable number of sources except when non-competitive procurement is justified. The Head of the DoD Component, or designee, shall prescribe criteria for non-competitive procurements. NAF contracts shall be awarded to responsible offerors and to offerors who offer the best value to the NAFI. Contracting officers shall not award NAF contracts to entities on the "List of Parties Excluded From Federal Procurement and Nonprocurement Programs" (reference (e)).

4.3. The Heads of the DoD Components, or their designees, shall prescribe NAF procurement procedures that:

4.3.1. Require personnel accomplishing NAF procurements to comply with the DoD Joint Ethics Regulation (reference (f)).

4.3.2. Prohibit personal service contracts, as defined in the DoD Personnel Policy Manual for Nonappropriated Fund Instrumentalities (reference (g)).

4.3.3. Prescribe criteria for legal review of NAF contracting actions. At a minimum, legal review shall be required for protests, contract disputes, claims, novations, and terminations. Legal services may be provided by or through lawyers in the offices of

the Judge Advocates General, lawyers in the offices of the DoD Components' General Counsel or legal staff within the NAFI organization.

4.3.4. Establish management oversight and internal control systems.

4.3.5. Conform to the procedures for protest and dispute resolution set forth in DoD Instruction 4105.71.

4.3.6. Prescribe criteria for audit review of NAF contracts. As provided in DoD Instruction 7600.6 (reference (h)), the Defense Contract Audit Agency may provide audit services to evaluate price proposals, to audit contracts, and to review NAF contract pricing claims against contractors.

4.3.7. *Ensure the military exchanges implement a program that ensures that private label merchandise is not produced by child or forced labor (reference (i)).*

4.4. The Heads of the DoD Components, or their designees, shall prescribe criteria for determining when central or regional procurement offices shall be used to accomplish NAF procurements. Such criteria shall specify, as appropriate, separate offices to serve different Armed Services, programs, dollar thresholds, etc. Existing NAF and APF contracts and agreements shall be used to satisfy NAF requirements when such contracts or agreements are available, cost-effective, and meet the needs of the requiring activity. To encourage cooperative initiatives, DoD NAFIs shall authorize other NAFI organizations to place delivery orders against their contracts to the maximum extent practical.

4.5. In executing NAF procurements, the Heads of the DoD Components, or their designees, shall ensure compliance with the requirements of applicable statutes, regulations, or directives. Each NAF contract shall:

4.5.1. Contain clauses governing: changes, examination of records, dispute resolutions, and terminations.

4.5.2. Apply the Buy American Act (reference (j)), and the Trade Agreements Act (TAA) (reference (k)), to the procurement of non-resale supplies and equipment.

4.6. Procurement methods and procedures that result in firm fixed-price contracts are preferred; however, price adjustment provisions may be used when the contracting officer determines it is in the best interest of the NAFI.

4.7. Alternative purchase methods, such as the use of NAF purchasing agreements, master vendor agreements, commercial purchase cards, and emergency procurement procedures, may be authorized.

4.8. NAFIs will use the Government-wide purchase card or other commercial credit card for non-resale items and services procured with NAF when appropriate and cost effective.

4.9. The following do not apply to NAF procurements:

4.9.1. FAR (reference *(q)*), the Defense Federal Acquisition Regulation supplement (reference *(r)*), or DoD Component supplements.

4.9.2. Chapter 137 of 10 U.S.C. (reference *(b)*).

4.9.3. The Small Business Act, as amended (reference *(s)*).

4.9.4. The Buy American Act (reference *(j)*) and section 2512 of the Trade Agreements Act of 1979 (reference *(k)*) do not apply to purchases of resale items.

4.10. Under section 2482a of 10 U.S.C. (reference *(b)*), DoD Agencies and NAFIs that support the operations of exchanges or Morale, Welfare and Recreation (MWR) programs are authorized to enter into contracts or other agreements with another element of the Department of Defense or another Federal Department, Agency, or instrumentality to provide or obtain items and services that are beneficial to the efficient management and operation of the exchange or MWR systems, as defined by references *(l)* through *(p)*, respectively. Section 2482(b) of 10 U.S.C. (reference *(b)*) contains similar authority for commissaries. Because contracts paid from appropriated or commissary surcharge funds must follow the Federal Acquisition Regulation (FAR) (reference *(q)*), and since parties to these agreements are Federal entities, the Heads of the DoD Components, or their designees, shall tailor the contract clauses, as appropriate. Appropriated fund and commissary surcharge fund contracts under sections 2482(a) and 2482(b) must comply with the FAR including the requirement for competition and the direction to distribute micropurchases equitably among qualified suppliers.

4.11. Representatives of the Under Secretary of Defense for Personnel and Readiness and the DoD Components shall meet at least annually to review NAF procurement matters and to address opportunities for cooperation, joint procurement initiatives, and contract standardization. The Heads of the DoD Components, or their designees, shall identify key NAF procurement personnel to represent the Exchange Services, military MWR programs, civilian MWR programs, billeting programs, and other supplemental mission programs under DoD Directive 1015.1 (reference *(c)*). When required by the agenda, representatives of the DoD General Counsel and NAFI legal counsel shall be in attendance.

5. RESPONSIBILITIES

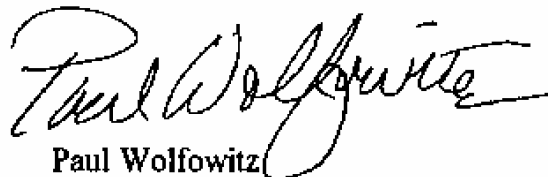
5.1. The Assistant Secretary of Defense for Force Management Policy (ASD(FMP)), under the Under Secretary of Defense for Personnel and Readiness, shall prescribe NAF procurement policy.

5.2. The Heads of the DoD Components, or their designees, shall establish NAF procurement procedures consistent with this Directive, DoD Instruction 4105.71 (reference (d)), and the policies prescribed by the ASD(FMP).

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

6. EFFECTIVE DATE

This Directive is effective immediately.



Paul Wolfowitz
Deputy Secretary of Defense

Enclosures - 2

- E1. References, continued
- E2. Definitions

E1. ENCLOSURE 1

REFERENCES, continued

- (e) General Services Administration, "List of Parties Excluded From Federal Procurement and Nonprocurement Programs," current edition
- (f) DoD 5500.7-R, "Joint Ethics Regulation," August 30, 1993
- (g) DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," December 1988
- (h) DoD Instruction 7600.6, "Audit of Nonappropriated Fund Instrumentalities and Related Activities," April 16, 1987
- (i) *FY 2002 National Defense Authorization Act, House Report 107-194*
- (j) Sections 10a-10d of title 41, United States Code
- (k) Sections 2501-2582 of title 19, United States Code
- (l) DoD Directive 1330.9, "Armed Services Exchange Regulations," December 15, 1986
- (m) DoD Directive 1015.2, "Military Morale, Welfare and Recreation (MWR)," June 14, 1995
- (n) DoD 1015.8-R, "DoD Civilian Employee Morale, Welfare, and Recreation Activities and Supporting Nonappropriated Fund Instrumentalities Regulation," November 1985
- (o) DoD Directive 1015.11, "Lodging Resource Policy," December 9, 1996
- (p) DoD Directive 1330.17, "Military Commissaries," March 13, 1987
- (q) Federal Acquisition Regulation, current edition
- (r) Department of Defense Federal Acquisition Regulation Supplement, current edition
- (s) Section 631-657c of title 15, United States Code

E2. ENCLOSURE 2

DEFINITIONS

E2.1. TERMS

Following are the definitions:

E2.1.1. Best Value. The expected outcome of a procurement that, in the NAFI's estimation, provides the greatest overall benefit in response to the requirement.

E2.1.2. Competitive Negotiation. The method of procurement that permits oral and or written responses to a solicitation and subsequent negotiation of prices, terms or conditions of the proposed contract to achieve the best advantage for the NAFI. This method of procurement allows the contracting officer the widest latitude in arriving at a fair and reasonable price and mutually agreed upon terms.

E2.1.3. Exchange Service. The term "Exchange Service" refers to the Army & Air Force Exchange Service, the Navy Exchange Service Command, and the Marine Corps Exchange.

E2.1.4. Items. All property (including articles, materials, supplies, equipment, software and parts) except facilities, land, or interests in land.

E2.1.5. Nonappropriated Funds (NAF). Monies derived from sources other than congressional appropriations and commissary surcharge funds, 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.

E2.1.6. 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 not incorporated under the law of any State or 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 may also administer appropriated resources to carry out its purposes.

E2.1.7. Private Label Merchandise. *Includes products carrying the exchange's own name or a name created exclusively for that exchange or more than one exchange.*

E2.1.8. 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 items 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 and 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.