



TRICARE
MANAGEMENT
ACTIVITY

**OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
HEALTH AFFAIRS**

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JUL 14 2008

MEMORANDUM FOR: SEE DISTRIBUTION

**SUBJECT: TRICARE Management Activity Interim Guidance on In-Sourcing
New and Contracted Out Functions**

The purpose of this memorandum is to provide interim TRICARE Management Activity (TMA) guidance for implementing new Department of Defense (DoD) guidelines and procedures on in-sourcing new and contracted out functions.

Recent legislation has given DoD increased authority and established new requirements regarding in-sourcing new and contracted out functions. Section 324 of the Fiscal Year 2008 National Defense Authorization Act (NDAA) requires that the Under Secretary of Defense for Personnel and Readiness (USD (P&R)) develop guidelines and procedures to ensure that DoD activities consider using DoD civilian employees to perform new functions or functions that are currently performed by contractors.

The USD (P&R) guidelines were issued as an attachment to a Secretary of Defense memorandum, subject: "Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-sourcing New and Contracted Out Functions," dated April 4, 2008 (attached). This interim implementation guidance for TMA is issued in accordance with paragraph 7.4 of the USD (P&R) guidelines and procedures.

TMA office space in the Skyline Complex is at its capacity, and TMA is under antiterrorism space restrictions. The Skyline Complex does not meet the minimum DoD antiterrorism standards for buildings as cited under Unified Facilities Criteria (UFC) 4-0-101-01, dated January 22, 2007. For this reason, and because TMA is slated to relocate as part of the current Base Relocation and Closure (BRAC) cycle, TMA activities are not authorized to expand their office space within the Skyline Complex to accommodate additional civilian employees.

Because it has been identified for relocation under the BRAC, the TMA Director has determined that, in most cases, in-sourcing cannot take place prior to 2011, or such time as TMA's BRAC relocation takes place, whichever occurs first. In those cases in which BRAC/antiterrorism restrictions do impact on a TMA requiring activity's ability to bring on additional Government staff, TMA will not delay acquisition actions, but will implement the USD (P&R) guidelines and procedures, planning for conversion of functions to DoD civilian performance when determined to be cost-effective, and consistent with interim BRAC restrictions. The following procedures are in effect:

1. In most cases an economic analysis for new service contracts (or new support agreements requiring substantial contracted services) must be performed and documented in accordance with paragraph 4.3 of USD (P&R) guidelines. However, when exercising an option under an existing contract, the requiring activity is not required to conduct an economic analysis. Other notable exceptions include: requirements for products, such as systems or software covered under DoD 5000 series; one-time requirements; intermittent requirements; or requirements that are not long-term in nature. Should TMA requiring activity believe they are exempt from performing an economic analysis for a reason not stated above, they should request a written determination from TMA Human Resources. These requests should be supported by the requiring activity's rationale for exemption.

2. In cases in which an economic analysis is required, the determination of suitable DoD civilian grade levels and series, and the actual performance of the economic analysis is an inherently governmental function, and shall not be performed by contractor personnel. To aid Government officials in completing this economic analysis, TMA Procurement Support has developed a set of tools. Three separate tools are available for economic analyses comparing the cost of DoD civilian employees to contracting options under D/SIDDOMS-3, TEAMS, and T/AARMS. A fourth tool is available when another contract vehicle has been approved for use. These tools are discussed within, and accessible via hyperlink, at paragraph 3.2.2 of the TRICARE Management Activity Non-Purchased Care Acquisition Desk Top Reference Guide or paragraph 6.9.3 of the TMA Policy For The Acquisition Of Non-Purchased Care Support. These are "first generation" tools and are subject to refinement and enhancement pending the expected receipt of additional guidance from USD (P&R).

3. If upon completion of the economic analysis, performance by DoD civilian employees appears to be the lower cost alternative versus contract support, but BRAC/antiterrorism restrictions impact TMA requiring activity's ability to bring on additional Government staff, then the requiring activities will:

a. Complete the acquisition package to include the completed economic analysis. Consider the number and duration of option periods for contracts to allow sufficient flexibility for future conversion to in-house performance.

b. Process the acquisition action in accordance with TMA policy. Include a copy of the economic analysis.

c. Ensure the function is identified for future conversion in the TMA inventory required by Section 807 of the FY 2008 NDAA. Required information includes the following data elements to be reported to your supporting Acquisition Manager (AM) in the TMA Procurement Support Division, which is responsible for maintaining the inventory of TMA's non-purchased care services.

- (1) The functions and missions performed by the contractor
- (2) The name of the TMA requiring activity and the proposed contracting office
- (3) The form of the contracting action (e.g. Full and Open, Fair Opportunity, Limited Sources, Sole Source, etc.)
- (4) Whether or not the requiring activity will be using:

- (a) A performance-based contract, performance-based task order, or other performance-based arrangement that contains firm fixed prices for the specific tasks to be performed;

- (b) Any other performance-based contract, performance-based task order, or performance-based arrangement; or

- (c) Any contract, task order, or other arrangement that is not performance-based.

- (5) The total dollar amount and duration, broken out by base period and option periods

- (6) The funding source for the contract by appropriation and operating agency

- (7) The date of the economic analysis and the result of the economic analysis

- (8) The number of full-time contractor employees paid for the performance of the activity,

- (9) A statement indicating whether or not the contract entails:

- (a) Personal services,

- (b) Inherently governmental functions, as defined in FAR 7.503(c), or

- (c) Functions closely related to inherently governmental functions, as defined in FAR 7.503(d).

d. Provide the completed economic analysis to the Director of the TMA Human Resources Division, and unless the Director of the TMA Human Resources Division determines that qualified DoD civilians cannot be hired to perform the function, develop position descriptions and a written plan for conversion and recruitment activities to commence once BRAC/antiterrorism restrictions no longer apply. This plan should address transition timelines from contractor to DoD civilian performance, office organization, space requirements, and equipment and furniture needs, among other things.

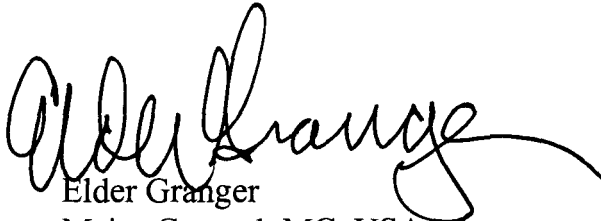
e. Factor the additional office space requirements into all future BRAC planning.

f. Commence conversion activities once notified by the TMA Director or Deputy Director that the BRAC/antiterrorism restrictions no longer apply.

In cases in which the economic analysis indicates that performance by DoD civilian employees appears to be the lower cost alternative versus contract support, and BRAC restrictions do not impact the TMA requiring activity's ability to bring on additional government staff, the responsible TMA Functional Chief will direct that all necessary in-sourcing actions commence so that transition to Government performance takes place within a reasonable period of time. If there are legitimate reasons consistent with USD (P&R) guidelines and procedures why the requirement must continue to be satisfied via contract (e.g. the TMA local Human Resources Office determines in writing that qualified DoD civilians cannot be hired to perform the function), the responsible TMA Functional Chief will document those reasons in the form of a memorandum for the record (MFR) and submit this MFR with the acquisition package.

All supporting documentation (to include copies of economic analyses, decisions made by the Director of the TMA Human Resources Division, and pertinent Contracting Officer determinations) shall be retained by the TMA Requiring Activity for four calendar years from the date of the final decision to either commence conversion to DoD performance, or to continue with contract support. These documents will be marked as procurement sensitive and will be safeguarded as such.

Should you have any questions on this guidance, my point of contact is Ms. Suzanne Curtis, who may be reached at (703) 681-1113.



Elder Granger
Major General, MC, USA
Deputy Director

Attachment:
As stated

cc: USD (P&R)

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THE DEPUTY SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

UPR

APR 04 2008

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, JOINT STAFF
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Implementation of Section 324 of the National Defense Authorization Act for Fiscal Year 2008 (FY 2008 NDAA)—Guidelines and Procedures on In-sourcing New and Contracted Out Functions

Section 324 of the FY 2008 NDAA, Public Law No. 110-181, January 28, 2008 (attached), added a new section 2463 to title 10, United States Code (U.S.C.) that requires the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to develop guidelines and procedures to ensure that the Department considers using DoD civilian employees to perform new functions or functions that are performed by contractors. It also requires these guidelines and procedures to be issued no later than 60 days after the enactment of the FY 2008 NDAA, directs the DoD Inspector General to submit a report on implementation of section 2463 to the congressional defense committees within 180 days of enactment of the Act, and repeals section 343 of the National Defense Authorization Act for Fiscal Year 2006 (FY 2006 NDAA).

This memorandum issues the 10 U.S.C. §2463 guidelines and procedures prepared by USD(P&R) (attached). The July 27, 2007, Under Secretary of Defense for Acquisition, Technology and Logistics (USD (AT&L)) policy memorandum (attached) that implemented section 343 of the FY 2006 NDAA which has now been repealed, is cancelled.

Section 2463 of title 10, U.S.C., directs the Department to give special consideration to using DoD civilian employees to perform certain categories of functions and to use the inventory of contractors (required by section 807 of the FY 2008 NDAA) to identify those functions. It also precludes the Department from conducting public-private competitions to implement 10 U.S.C. §2463 and prohibits the Department from placing limitations or restrictions on the number of functions that may be converted to performance by DoD civilian employees. The USD(P&R) is implementing the guidelines and procedures as part of the Manpower Management program consistent with 10 U.S.C. §129a. The guidelines and procedures state that DoD Components can use DoD civilian employees to perform new functions or functions that are performed by a contractor if an economic analysis shows that DoD civilian employees are the low cost



provider, or the DoD Component has determined, consistent with DoD Instruction 1100.22, "Guidance for Determining Workforce Mix," that the function under review is inherently governmental or exempt from private sector performance. This guidance will help ensure that when DoD Components make decisions to use DoD civilian employees, the decisions are fiscally informed and analytically based.

This new legislation should improve our ability to reduce costs and manage the Defense workforce. However, as DoD Components decide to use DoD civilian employees to perform new and expanded mission requirements and to in-source contracted work, the size of the Department's in-house workforce will increase. This will have the attention of Congress. If we are to retain the authority provided under 10 U.S.C. §2463 and continue to benefit from its flexibility, the Department must demonstrate to Congress how it is being used to reduce workforce costs, realign inherently governmental and exempt functions for government performance and manage more efficiently and effectively. The attached guidelines and procedures call on you to manage closely 10 U.S.C. §2463 actions to ensure responsible stewardship of Defense resources and to assist the USD(P&R) with reporting to Congress on the Department's progress with implementing section 324 of the FY 2008 NDAA and 10 U.S.C. §2463.

If there are questions on the attached guidelines and procedures please contact Pam Bartlett in the OUSD(P&R) at Pam.Bartlett@osd.mil.



Attachments:
As stated

cc:
USD(AT&L)
USD(P&R)
D, PA&E
DoD IG

PUBLIC LAW NO. 110-181

SEC. 324. GUIDELINES ON INSOURCING NEW AND CONTRACTED
OUT FUNCTIONS.

<< 10 USCA § 2463 >>

(a) CODIFICATION AND REVISION OF REQUIREMENT FOR GUIDELINES.--

(1) IN GENERAL.--Chapter 146 of title 10, United States Code, is amended by inserting after section 2462 the following new section:

"§ 2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions

"(a) GUIDELINES REQUIRED.--(1) The Under Secretary of Defense for Personnel and Readiness shall devise and implement guidelines and procedures to ensure that consideration is given to using, on a regular basis, Department of Defense civilian employees to perform new functions and functions that are performed by contractors and could be performed by Department of Defense civilian employees. The Secretary of a military department may prescribe supplemental regulations, if the Secretary determines such regulations are necessary for implementing such guidelines within that military department.

"(2) The guidelines and procedures required under paragraph (1) may not include any specific limitation or restriction on the number of functions or activities that may be converted to performance by Department of Defense civilian employees.

"(b) SPECIAL CONSIDERATION FOR CERTAIN FUNCTIONS.--The guidelines and procedures required under subsection (a) shall provide for special consideration to be given to using Department of Defense civilian employees to perform any function that--

"(1) is performed by a contractor and--

"(A) has been performed by Department of Defense civilian employees at any time during the previous 10 years;

"(B) is a function closely associated with the performance of an inherently governmental function;

"(C) has been performed pursuant to a contract awarded on a non-competitive basis; or

"(D) has been performed poorly, as determined by a contracting officer during the 5-year period preceding the date of such determination, because of excessive costs or inferior quality; or
"(2) is a new requirement, with particular emphasis given to a new requirement that is similar to a function previously performed by Department of Defense civilian employees or is a function closely associated with the performance of an inherently governmental function.

"(c) EXCLUSION OF CERTAIN FUNCTIONS FROM COMPETITIONS.--
The Secretary of Defense may not conduct a public-private competition under this chapter, Office of Management and Budget Circular A-76, or any other provision of law or regulation before--
"(1) in the case of a new Department of Defense function, assigning the performance of the function to Department of Defense civilian employees;
"(2) in the case of any Department of Defense function described in subsection (b), converting the function to performance by Department of Defense civilian employees; or
"(3) in the case of a Department of Defense function performed by Department of Defense civilian employees, expanding the scope of the function.

"(d) USE OF FLEXIBLE HIRING AUTHORITY.--(1) The Secretary of Defense may use the flexible hiring authority available to the Secretary under the National Security Personnel System, as established pursuant to section 9902 of title 5, to facilitate the performance by Department of Defense civilian employees of functions described in subsection (b).
"(2) The Secretary shall make use of the inventory required by section 2330a(c) of this title for the purpose of identifying functions that should be considered for performance by Department of Defense civilian employees pursuant to subsection (b).

"(e) DEFINITIONS.--In this section the term 'functions closely associated with inherently governmental functions' has the meaning given that term in section 2383(b)(3) of this title."

(2) CLERICAL AMENDMENT.--The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 2462 the following new item:

"2463. Guidelines and procedures for use of civilian employees to perform Department of Defense functions."

(3) DEADLINE FOR ISSUANCE OF GUIDELINES AND PROCEDURES.--The Secretary of Defense shall implement the guidelines and procedures required under section 2463 of title 10, United States Code, as added by paragraph (1), by not later than 60 days after the date of the enactment of this Act.

(b) INSPECTOR GENERAL REPORT.--Not later than 180 days after the date of the enactment of this Act, the Inspector General of the Department of Defense shall submit to the congressional defense committees a report on the implementation of this section and the amendments made by this section.

(c) CONFORMING REPEAL.--The National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) is amended by striking section 343.