



THE ASSISTANT SECRETARY OF DEFENSE

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HEALTH AFFAIRS

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MEMORANDUM FOR DEPUTY DIRECTOR, TRICARE MANAGEMENT ACTIVITY
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SUBJECT: Management of TRICARE Management Activity Non-Purchased Care
Contracts

The purpose of this memorandum is to provide guidance regarding the appropriate management and oversight of TRICARE Management Activity (TMA) non-purchased care contracts by TMA government employees. With the recent attention given to vulnerabilities of the defense contracting system, it is crucial for TMA Government employees to understand their responsibilities for contract administration and surveillance.

TMA manages more than \$1.2 billion of non-purchased care support services per year spread across hundreds of active contracts and orders. While each of these actions are unique with regard to requirements, funding and contract type, they are all similar in that they are non-personal service contracts. Managing non-personal service contracts requires Government staff to understand the differences between managing Government employees and contract management.

As background, Congress has recently taken a critical look at how the Federal Government and the Department of Defense (DoD), in particular, ensures that Government contracts are managed with integrity. Section 813 of the John Warner National Defense Authorization Act for Fiscal Year 2007 established a panel of senior executives to look at issues and make recommendations on how to improve DoD's efforts to ensure contracting integrity. DoD is implementing this mandate by conducting a comprehensive review of all acquisition practices, to include contract administration and surveillance, to eliminate areas of vulnerability within the Defense contracting system that allow fraud, waste and abuse to occur.

This Panel for Contracting Integrity, which is chaired by James Finley, Deputy Under Secretary of Defense (Acquisition and Technology) (DUSD(AT&L)), includes representation by TMA, is comprised of Senior Executive Service and Flag Officers, and is responsible for submitting a report to Congress by the end of each calendar year until 2009. This panel is implementing departmental methods for strengthening oversight of DoD contracts by all agencies. The panel will recommend changes in the law, regulations, and policy that it determines necessary to eliminate areas of vulnerability, and will address weaknesses identified by both the Government Accountability Office (GAO) and DoD Inspector General (IG). Both agencies have recently published reports critical of the DoD's contract management and practices. For example, GAO-05-274: Opportunities to Improve Surveillance on Department of Defense Service Contracts, March 17, 2005; and DoD IG – D2006-010: Contract Surveillance for Service Contracts, October 28, 2005.

In a related effort to emphasize the importance of contract management, the Office of the Under Secretary of Defense (Acquisition, Technology and Logistics), has recently published contract management-related guidance emphasizing:

- The inappropriateness of using service contracts to obtain products, supplies and facilities not required for, or incidental to, the performance of those service contracts (March 2, 2007, memorandum, subject: Contracts for Services).
- The use of Government Quality Assurance Surveillance Plans and the need for Government surveillance during contract performance to provide reasonable assurance that efficient methods and effective cost controls are in place (September 17, 2007, memorandum, subject: Contracting Practices – Independent Government Estimates, Government Surveillance, and Contract Quality Assurance).

Federal Acquisition Regulation (FAR) Subpart 37.101 defines a non-personal service contract as, "a contract under which the personnel rendering the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its

employees.” Most notably, when overseeing or managing a non-personal service contract, the Government (usually the Contracting Officer’s Representative (COR) or Task Manager) must not be involved in the business operations of the contractor, especially its Human Resources (HR) practices. Involvement in HR practices of the contractor, namely the hiring and termination of employees and salary determinations, is a clear violation of Federal, department and agency policies. In addition to avoiding involvement in the contractor’s HR practices, the Government staff should avoid: Treating contractor staff as if they were Government employees, reviewing and approving contractor resumes and potential new hires, and reviewing or approving contractor staffs’ leave. This rule applies to all but a few contractor “key personnel” positions. The Government may review and approve a resume for the replacement of a key personnel position. However, key personnel positions should be limited to Project Manager levels, typically one per contract, and are so designated in the award.

In addition to following the rules regarding non-personal service contracts, TMA staff must exercise great diligence and never lose sight of, or control over, inherently governmental functions.

Federal Acquisition Regulation Part 7.5, “Inherently Governmental Functions,” outlines the criteria to determine if a function is inherently governmental and is applicable to all contracts for services. Most notably, Government staff should avoid having contractor personnel oversee Government staff or other contractors’ staff. Additionally, contractors are not to administer/manage contracts, to include approving contract change requests or contract performance/quantities.

Since Federal conflict of interest rules found in 18 United States Code Section 208 and Title 5, Code of Federal Regulations, Section 2635, apply to Government staff, they must take care to avoid actual or apparent conflicts of interest with their official duties. A “conflict of interest” is a personal interest or relationship, as defined by law or regulation, that conflicts with the faithful performance of official duty. Government staff may not make any decision, give advice, or make a recommendation in any Government matter that would affect their own financial interests, the financial interests of a family member, or any organization in which they have a financial interest.

All CORs are required to complete training before assuming their duties, in accordance with DFARS 201.602-2 and Defense Procurement and Acquisition Policy memorandum entitled “Designation of CORs on Contracts for Services in Support of DoD Requirements,” dated December 6, 2006. To satisfy this requirement, online COR training is available via the Web-based module, “COR with a Mission Focus” offered by the Defense Acquisition University at www.dau.mil. In addition to CORs, all TMA personnel

engaged in any phase of the acquisition process are strongly encouraged to obtain training to ensure proper management of government resources. The TMA Procurement Support Office also conducts quarterly acquisition seminars and monthly acquisition forums on various acquisition topics.

As Senior Leaders, we must set the example for the rest of the organization. Appropriate contract management and oversight is critical to enabling TMA to fulfill its mission supporting our Service members and their families.

Additional information on these topics can be found at:

- www.tricare.mil/tps/DeskTopReference.htm
- www.tricare.mil/tps/AcquisitionTrainingSeminarMaterials.htm

If you have any questions regarding this guidance, please contact Ms. Suzanne Curtis, Director, TRICARE Management Activity, Procurement Support Office, at Suzanne.Curtis@tma.osd.mil.



S. Ward Casscells, MD

cc:

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